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A

GENERAL DIGEST

OF THE

CRIMINAL RULINGS AND DECISIONS

OF THE HIGH COURTS

ESTABLISHED IN INDIA.

COMPILED, ARRANGED AND PUBLISHED

GANPUTRAO HARI KHANDEKAR

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94	45	relevent	relevant
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A

GENERAL DIGEST

OF THE

RULINGS AND DECISIONS

OF THE SEVERAL HIGH COURTS

IN INDIA.

1. CRIMINAL LAW.

1. ABETMENT.

1. It is not necessary, to constitute the offence of abetment, that the act abetted should be committed. 18 *W. R.* 32.

2. In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. 20 *W. R.* 41.

3. An omission to give information that a crime has been committed does not, under S. 107 P. C. amount to abetment unless such omission involves a breach of a legal obligation. 4 *B. L. R. A. J.* 7.

4. Held, that where A gave a *dab* to B, who had given out his intention to coerce the party against whom he was acting, and who inflicted grievous hurt on such party with the *dab*. A was guilty of abetment within the second head of the cl. 3, S. 107 of the P. C. 12 *W. R.* 52.

ABETMENT (*punishment for—where the act abetted is committed in consequence*) *P. C. S.* 109.

5. Under S. 109 P. C. the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. 7 *W. R.* 54.

ABETTOR, *P. C. S.* 108.

6. S. 108 P. C. does not contemplate any acts of subsequent abetment, or provide for the punishment of such officers except when they are such as are defined in S. S. 212 to 218. 8 *W. R.* 28.

ABETTOR (*present when offence is committed*) *P. C. S.* 114.

7. In order to bring a prisoner within S. 114 P. C., it is necessary first to

make out the circumstances which constitute abetment, so that, "if absent" he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed. 7 *W.R.* 49.

8. According to S. 114 P. C. if the nature of the act constitutes abetment, the abettor, if present, is to be deemed to have committed the offence though in point of fact another actually committed it. 4 *M. R. App.* 37.

9. S. 114, and not S. 149, was held to apply to a case where, upon a charge of mischief by fire, the prisoner admitted that he was an abettor, and that he was present at the time the offence was committed. 17 *W. R* 52.

10. When a person abets the commission of an offence and is present at the time when it is committed, he should be tried, under S. 114 P. C. for the same offence as the principal. 8 *B. R.* 164.

ABETTORS AND PRINCIPALS.

11. When two persons take an active part in a murder, they become principals in the first degree though one of them only may have been the actual killer. If one stood by whilst the crime was being committed, he would be an abettor. 1 *W. R.* 49.

12. Where several prisoners were all concerned in a case of torture and were prosecuting a common object, each was held guilty as a principal and not as an abettor of others. 7 *W. R.* 3.

13. If several persons go out together to apprehend a man and take him to the Thanna on a charge of theft, and some of the party in the presence of the others assault and ill-treat the man, all present do not necessarily by their presence assist every act done, nor are consequently liable as principals. 5 *W. R. F. B. R.* 45.

14. Persons punished as principals, cannot also be punished for abetment of the same offence. 4 *W. R.* 23.

ASSAULT (*abetment of*)

15. Where, of several persons constituting an unlawful assembly, some only are armed with sticks, and A one of them, is not so armed, but picks up a stick and uses it, B (the master of A) who gave a general order to beat, is guilty of abetting the assault made by A. 12 *W. R.* 51.

CHEATING OR EXTORTION (*abetment of*)

16. The mere issue of a *Hookumnamah* (to collect statistical information) by a Police Officer is no legal ground for a conviction of abetment of cheating or of extortion. 4 *W. R.* 5.

DACOITY (*abetment of*)

17. Knowing of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity. 4 *W.R.* 2.

FALSE CERTIFICATE OF SUMMONS (*abetment of issue of*)

18. Although there was no chowkeedar in the village of the name appearing on the receipt acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers. 3 *W. R.* 37.

FALSE CHARGE (*abetment of*)

19. The conviction of a Police Inspector for having abetted the bringing of a

false charge of murder, quashed, because it was not distinctly shown that he preferred the charge *mala fide*. 2 *W. R.* 10.

FALSE EVIDENCE (*abetment of*)

20. There can be no offence of the abetment of giving false evidence unless the person charged with abetment intended not only that the statement should be made, but intended that the statement should be made falsely. 20 *W. R.* 41.

21. The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation: Held that this was abetment of giving false evidence in a stage of a judicial proceeding and was triable before a Court of Session only. 2 *M. R.* 438.

22. Where C. falsely represented himself to be U and the writer of a document signed by U and T knowing that C was not U and had not written such document, adduced C as U and as the writer of that document,—Held that T ought to have been convicted on a charge of abetting the giving of false evidence. 8 *W. R.* 5.

HURT, GRIEVOUS (*abetment of*)

23. The prisoners having abetted an assault, and murder having been committed: Held, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt and not abetment of murder. 5 *W. R.* 76.

24. Where A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence: Held that A was guilty at least of abetting the commission of voluntarily causing grivous hurt. 7 *W. R.* 97.

25. Held that the prisoners could not be convicted of abetment of grievous hurt, and of abetment of riot, after having been convicted of both charges as principals. As, however, the evidence credited by the jury was held by the High Court to support a conviction of culpable homicide, and as the prisoners, even on their conviction, on the lessor charge of grievous hurt, might have been sentenced to a much heavier punishment than had been passed on them, their punishment was not reduced. 4 *W. R.* 37.

MURDER (*abetment of—by impossible means*)

26. *Quere.* Whether abetment to murder by sorcery or other impossible means is an offence under the Penal Code. 10 *B. R.* 75.

THEFT (*abetment of*)

27. A person can be convicted of abetment of theft under the first Explanation of S. 107 P.C., only if he either procures or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient. 2 *W. R.* 40

28. The carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code. 18 *W. R.* 8.

29. A prisoner who consented to form one of a party who committed theft, and resiled from his agreement but was present at the commission of theft, does not come within cl. 2 S. 107 P. C., and ought not to have been convicted of the theft but of the abetment thereof under cl. 3 S. 107 and S. 109 P. C. read together. 8 *W. R.* 78.

II. ATTEMPTS TO COMMIT OFFENCES.

ATTEMPT (*to commit an offence not otherwise expressly provided for*) *P. C. S.* 511.

1. To constitute the offence of attempt under S. 511 P. C. there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence.

The provisions of S. 511 P. C. do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such acts are doubtless done towards the commission of the offence, they are not done *in the attempt* to commit the offence within the meaning of the word "attempt" as used in the Section. 4 *N. W. P. R.* 46.

2. To constitute an offence under S. 511 P. C. it is not only necessary that the prisoner should have done an overt act towards commission of the offence, but that the act itself should have been done in the attempt to commit it. 3 *B. L. R. A. J.* 55.

3. Held by *Glover J.* that incendiarism having, on several occasions occurred, in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under S. 511 P. C. guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt:

Held by *Mitter J.* that the possession of a fire-ball and moving about with it cannot support a conviction under S, S. 436 and 511 of the P. C. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. 3 *B. L. R. A. J.* 55.

FALSE EVIDENCE (*attempt to fabricate*)

4. Facts showing that an accused person had dug a hole intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate false evidence. 4 *N. W. P. R.* 133.

MIS-CARRIAGE (*attempt to cause.*)

5. In a case in which the child was full-grown, the Court declined to convict the accused of causing mis-carriage under S. 312 P. C., that section supposing an expulsion of the child before the period of gestation is completed, but convicted them of an attempt to cause mis-carriage under S. S. 312 and 511 read together. 19 *W. R.* 32.

MURDER (*attempt to*)

6. In order to constitute the offence of attempt to murder under S. 307 of the P. C., the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events.

Aliter under S. 511 taken in connection with S. S. 299 and 300.

Therefore, where the prisoner presented an uncapped gun at E. J. (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger. Held that he could not be convicted of an attempt to murder upon a charge framed under S. 307 of the P. C; but that, under the same circum-

stances, he might be convicted, upon a charge of simple attempt to murder framed under S. 511 in connection with S. S. 299, and 300. 4 *B. R.* 17.

III. COIN (OFFENCES RELATING TO)

1. It is not necessary, to satisfy the ordinary definition of money, that a coin should be a legal tender receivable at a value in rupees fixed by law. Gold mohurs which, although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money" within the meaning of Act XIX of 1872. 5 *N. W. P. R.* 187.

COIN (*delivery to another of — possessed with the knowledge that it is counterfeit*) *P. C. S.* 239.

2. S. 239 P. C. is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner. 3 *N. W. P. R.* 150.

COIN, COUNTERFEIT *(delivery to another of—not known to be counterfeit when it was first possessed)* *P. C. S.* 241.

3. The gist of an offence under S. 241 P. C. (passing as genuine coin known to be counterfeit) is that, a person should deliver or attempt to induce any other person to receive as *genuine* coin known to be counterfeit. 4 *N. W. P. R.* 62.

IV. CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

ABSCONDING (*to avoid service of summons or order*) *P. C. S.* 172.

1. Held by the majority of the Court (*Campbell J. dissenting*) that a warrant addressed to a Police Officer to apprehend an offender and to bring him before the Magistrate is not a summons, notice, or order within the meaning of S. 172 P. C, and that the offence of absconding by an offender against whom a warrant has been so issued is not punishable under that section. 5 *W. R. F. B. R.* 71.

2. A warrant addressed to a Nazir by a Civil Court for the arrest of a defendant in execution of a decree is not a notice, summons, or order, within the meaning of S. 172 P. C. 4 *N. W. P.R.* 97.

INFORMATION (*giving false—to public servant)* *P. C. S.* 177.

3. A private individual is not bound by any law to give information of any offence which he has seen committed. 4 *B. L. R. A. J.* 7.

4. S. 177 P. C. does not apply to the case of *any person* who is examined by a Police Officer making a false statement, but to cases, when by law, landholders or village watchmen are bound to give information, and to other analogous cases of the same description. 12 *W. R.* 23.

5. Certain vaccinators were charged with furnishing false returns to their official superior. The Magistrate found as a fact that the returns furnished were false, but acquitted the defendants on the ground that they were not "legally bound" to furnish information within the meaning of S. 177 P.C. Held, that S.177 embraces every

case in which a subordinate may seek to impose false information upon his superior. The defendants in the present case were public servants and, part of the duties which they undertook was to make true returns to their official superior. To make false returns was therefore an offence. 6 *M. R. App.* 48.

INFORMATION (*giving false—with intent to cause a public servant to use his power to injury of another.*) *P. C. S.* 182.

6. To constitute an offence under S. 182 P. C. the information given must be information which the informer knew or believed to be false, and it must be proved, that he gave it with such knowledge. 9 *W. R.* 31.

7. Statements made by a prisoner for the purposes of his defence, cannot be held to be "information given to a public servant" within the meaning of S. 182 P. C. 2 *N. W. P. R.* 128.

8. No ground for a complaint of giving false information to a public servant under S. 182 P. C. exists on the part of any one but the public servant against whom the offence was committed. 3 *N. W. P. R.* 194.

INFORMATION (*omission to give—to public servant*) *P. C. S.* 176.

9. S. 176 P. C. applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation. 16 *W. R.* 35.

10. The refusal of a person to join in a dacoity does not imply a knowledge on his part of the commission of that offence, or render him liable to punishment under S. 176 P. C. for intentional omission to give notice or information for the purpose of preventing the commission of an offence. 7 *W. R.* 29.

ORDER (*disobedience of lawful*) *P. C. S.* 174.

11. In order to make a person summoned as a witness liable under S. 174 P. C. the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart. 10 *W. R.* 33; 14 *W. R.* 20.

12. Before convicting a person under S. 174 P. C. it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so. 17 *W. R.* 38.

13. S. 174 P. C. does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court. 1 *B. R.* 38.

14. A Sub-Magistrate convicted certain persons, under S. 174 P.C. of disobedience to summonses issued by him as Tahsildar. Held, that the convictions under the first part of S. 174, were sustainable. Madras Act III of 1869 gives Tahsildar power to issue summonses. 6 *M. R. App.* 44.

15. Held that a conviction under S. 174 P. C. for "having intentionally omitted to attend the Mahalkuri's katcheri to give evidence in a revenue case, under S. S. 26 and 29 of Reg. XVII of 1827, though the summons issued was duly served upon the accused," was not illegal. 5 *B. R.* 39.

16. The accused was convicted upon a charge that he, being summoned as a defendant in a case of trespass, left the court without permission and thereby disobeyed the summons. The Sub-Magistrate gave the accused a verbal order to appear when required, but the Magistrate did not adjourn the case to any particular day. Held, that the conviction was bad. 6 *M. R. App.* 10.

17. The defendant was arrested by a warrant and was released on bail to appear before the Magistrate on a specified day. The defendant appeared on that day, but the Magistrate being unable to take up the case, a verbal order was given to the defendant to appear on the following day. This he omitted to do and was convicted under S. 174 P. C. Held, that the conviction was good. 5 *M. R. App.* 15.

18. Accused was summoned as a witness in a case to be heard on 27th May. The summons was not served personally on accused, but affixed to the door of his house. On the appointed date the case was not taken up, but was adjourned by the public proclamation until June 5th. On this latter date accused failed to attend. For this he was convicted of an offence under S. 174 P. C. There was no evidence that the summons had been brought to the knowledge of the accused so as to require him to attend on the first occasion. Held, that on the ground of there being no evidence of the commission of an offence, the conviction must be quashed.

The adjournment of a trial by public proclamation is irregular and objectionable. 6 *M. R.* 29, 30.

ORDER (*disobedience to—of public servant*) *P. C. S.* 188.

19. Before a conviction can be had under S. 188 P. C., it must be proved that the accused knew that an order had been promulgated by a public servant directing such accused person to abstain from a certain act. 12 *W. R.* 49.

20. Where an order had been made by a Magistrate under S. 318* O. Cr. P. C. in favour of A in respect of certain land, and, D subsequently obtained an order from the Collector declaring him entitled to the same land in persuance of which he was put into possession by an officer of the Collector; it was held that before B could be convicted under S. 188 P. C. of disobeying an order made by a public officer, it should be proved that B was aware of the order under S. 318, and that having that knowledge he disobeyed it. 15 *W. R.* 50.

21. A conviction under S. 188 P. C., of disobedience of an order duly promulgated by a public servant, will not stand where the evidence fails to show that the disobedience caused, or tended to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or that it caused, or tended to cause danger to human life, health, or safety, or caused or tended to cause a riot or affray. 4 *M. R. App.* 6.

22. An order in writing under S. 62† O. Cr. P. C. is necessary to sustain a charge under S. 188 P. C. 17 *W. R.* 57.

23. Where by direction of Government, the Magistrate promulgated an order under S. 62 O. Cr. P. C., directing all persons to abstain from hook-swinging or other self-torture in public and from the abetment thereof, and no such order was upon the record, the High Court annulled the conviction of the prisoners by the Deputy Magistrate under S. S. 188 and 114 of the P. C. for having knowingly disobeyed that order. 18 *W. R.* 30.

24. When an order, under S. 318 O. Cr. P. C., was made between A on the one side and B and the then tenants of B on the other, declaring that A was in possession of the property in dispute: Held, that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question. 3 *B. L. R. A. J.* 13.

PROPERTY (*illegal purchase of, or bid for—offered for sale by public servant*) *P. C. S.* 185.

25 A person is guilty of contempt under S. 185 P. C. by binding for the lease of a ferry sold at public auction by the Magistrate, and failing to complete the sale. 3 *W. R.* 33.

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* See S. 530 N. Cr. P. C.; † see S. 518 N. Cr. P. C.

PUBLIC SERVANT (*obstructing in—discharge of duty*) *P. C, S.* 186.

26. Conviction and Sentence under S. 186 P. C. reversed, as the conduct of the accused refusing to accompany a measuring clerk employed under Act 1 of 1865 (Bombay) to his (the accused's) house and permit it to be measured did not constitute the offence of obstructing a public servant in discharging his public functions.

Quere. Whether S. 11 of the above Act justifies surveyors in entering private houses for the purpose of measuring them. 5 *B. R.* 51.

THREAT OF INJURY (*to public servant.*) *P. C. S.* 189.

27. A person against whom information has been falsely given with a view to his injury, has a right to bring a civil action for damages with or without the consent of the public servant against whom the offence was committed, but he cannot bring a criminal charge under S. 189 or any other section of Chapter 10 of the P. C. without the permission of such public servant, the law looking upon the conduct of the person who gives the false information as an offence, not against the individual charged, but against the public servant to whom the false information was given. 9 *W. R.* 31.

V. CRIMINAL BREACH OF CONTRACT OF SERVICE.

BRECH OF CONTRACT OF SERVICE (*during voyage or journey*) *P. C. S.*409.

1. *Quere*, Whether the words "during a voyage or journey" in S. 490 P.C. do not limit the offences made under that section to offences against travellers.

S. 490 P. C. however, does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases. 9 *W. R.* 12.

2. An agreement for personal service in conveying indigo from the field to the vasts is not a contract, the breach of which is punishable by S. 490 P. C. 6 *W. R.* 80.

3. Where a legislative enactment renders a servant punishable who leaves his employer's service without due warning, a charge, under such an enactment, will not be sustainable, unless it aver not only that the accused left his employer's service without giving the required warning, but also without lawful excuse. 3 *B. R. App.* 1.

VI. CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

CRIMINAL INTIMIDATION, *P. C. S.* 503.

1. An intention to intimidate, insult, or annoy any person in possession of a house, does not mean to insult or annoy any person in constructive, but in actual possession of the premises. 17 *W. R.* 47.

2. Where the accused went to the complainant, the brother of an adult woman, and told him that he had come from the *Sarkar* and would get him six months' imprisonment if he (the complainant did not let his sister go : Held that these words did not constitute either criminal intimidation, within the meaning

of S. 503 P. C. (there having been no threat of an injury in the sense of the Code), or any other offence known to the law. 8 *B. R.* 101.

VII. DEFAMATION.

1. The Penal Code makes no distinction between written and spoken defamation. 2 *W. R.* 36.

2. The Criminal law of this country with regard to defamation depends on the construction of S. 499 P. C., and not on what may be the English law on the same object. 14 *W. R.* 27.

3. The act of filing in Court a petition containing imputations concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputation within the meaning of S. 499 P. C. 14 *W. R.* 27.

4. Act XVIII of 1862 refers only to the High Court in its Original Criminal Jurisdiction, and is not applicable to Mofussil Courts. S. 27 of that Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of Exception 9, S. 499 of the P. C., he must shew that he has exercised due care and caution. 4 *W. R.* 22.

5. A Pleader or Mooktear relying upon the statements of his client, and in good faith, introducing into a pleading a defamatory averment, will be protected from liability for defamation by the 9th Exception to S. 499 of the P. C.; but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith. 2 *N. W. P. R.* 473.

6. A report made by an officer in execution of his duty and as the result of an order from his superior, which contained sweeping imputations against others, imputations which did not appear from the report to be made recklessly or unjustifiably, does not amount to defamation and is covered by the 9th Exception to S. 499 of the P. C. 14 *W. R.* 22; 6 *B. L. R. App.* 42.

7. A letter written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within Exceptions 8 and 10 of S. 499 of the P. C. 8 *B. R.* 168.

8. The Gumashtah of a Guru or Priest was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one and treated him with disrespect. Held, that the letter contained no expressions defamatory *per se.* If the person so treated was in a position entitling him to demand submission and to make non-submission an offence, then that position would render the communication privileged, and, if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory imputation. 6 *M. R. App.* 47.

9. Case of defamation in which the complainant admitted all the more serious charges on which he based his complaint. Conviction and sentence quashed, as the gist of the offence (*viz* that the charge was not made in good faith) was entirely lost sight of. 1 *W. R.* 6.

10. A false accusation not made in good faith renders the party making it liable to be charged with defamation. 2 *W. R.* 35.

11. It is not an error in law for a Judge to require a person accused of defamation to prove the several distinct imputations contained in a libellous article published by him, with the same strictness with which he would be required to prove them if he were the defendant in a civil action. 9 *B. R.* 451.

12. In a case of defamation, proof of despatch by post to a certain district of the paper containing the defamatory matter, is tantamount to proof of publication thereof in that district. 5 *W. R.* 44.

13. A simple assertion (nowhere disproved) regarding the way in which a Sheristadar had issued *perwannahs* in an arbitration suit, does not amount to defamation. 1 *W. R.* 24.

14. A person using defamatory expressions for the protection of his son's interests, is not privileged, unless the imputation is made in good faith, *i e* with due care and attention. 3 *W. R.* 45.

15. The fact that the complainant is a man of low caste, will not debar him from prosecuting for defamation on his being falsely charged with theft. 2 *W. R.* 36.

VIII. DOCUMENTS. (OFFENCES RELATING TO)

DEVICE OR MARK (*counterfeiting a—for authenticating documents*) *P. C. S.* 475.

1. In order to a conviction under S. 475 P. C.,the document which the accused has in his possession must have some counterfeit device or mark upon it, and it must be proved that the accused has the document in his possession with the intent of usi ng such device or mark for the purpose of giving the appearance of authenticity to the document. The document must be of the nature mentioned in S. 467 of the P. C. 15 *W. R.* 19.

DOCUMENT, FORGED (*using*) *P. C. S.* 471

2. There must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under S. 471 P. C. 8 W. R. 81; 17 *W. R.* 32.

3. A deed of divorce is a "valuable security" within the meaning of S. 30 of the P. C. The presenting of a forged document of such a nature for registration and obtaining registration would be "using" within S. 471 of that Code. 11 *W. R.* 16.

4. The false alteration of a Police Diary by a Head Constable was held to fall under S. 471, P. C. as the forgery of a document made by a public servant in his official capacity. 11 *W. R.* 44.

5. A person may be convicted of using as genuine a document which he knew to be forged, though he in the first instance produced only a copy of a copy of it. 6 *W. R.* 41.

6. A conviction may be had for using as genuine a forged document purporting to be made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon. 5. *W. R.* 96.

7. In a case in which the accused was charged with dishonestly using as genuine a pottah which he knew to be forged, and in which there was a fraudulent insertion, it was held that it was not necessary to prove that he personally inserted the word, but it was sufficient if it was inserted with his knowledge. 9 *W. R.* 22.

8. Where an intention to use a forged document, if necessary, was inferred from the facts of the case and from the conduct of the prisoner. 8 *W. R.* 11.

FORGERY, *P. C. S. S.* 463, 464.

9. A conviction for forgery under the Penal Code cannot be had unless it is proved that the accused himself made a document or part of a document with the intention of causing it to be believed that such document or part of a document was made by the authority of a person whose authority he knew that it was not made. 10 *W. R.* 7.

10. Where prisoner, to screen his own negligence, altered an office report, such conduct does not fall within the definition of forgery in the P. C. 2 *N. W. P. R.* 11.

11. The simple making of a false document constitutes the offence of forgery under S. 463 of the P. C., and it is not necessary that it should be issued or made known to the injury of a person's reputation either by being presented in Court or shown to any person. A false document may be made in the name of a fictitious person 10. *W. R.* 61, 2 *B. L. R. App.* 12.

12. The signing of a vakalutnamah in the name of co-decree-holders without their authority to do so, and delivering it to a vakeel with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of S. 463 P. C. 6 *W. R.* 78.

13. By a person consenting to act under a Mooktearnamah and attaching his name in token of such consent, he does not become a maker of the Mooktearnamah or a forger if the Mooktearnamah turns out to be forged. 5 *W. R.* 70.

14. Where a prisoner, who appealed to the Commissioner from an order of an Assessor under Act XXI of 1867, filed stamp paper for a copy of the Assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was ante-dated, it was held that he was guilty of having abetted the commission of forgery of a document within S. 463 and cl. 1 S. 464 of the P. C. 10 *W. R.* 23.

15. It must be proved that the accused practised deception so as to prevent a person from knowing the nature of the document before the accused can be found guilty under S. 464 P. C. of making a false document. 9 *W. R.* 20.

16. Where the accused, a Mohŭrrir in a Registry office, was charged with making false endorsements were signed by the Registrar, it was held that, before he could be convicted of forgery under part 3 S. 464 P. C. it must be shown that the Registrar, in consequence of deception practised upon him by the accused, did not know the contents of the document he was signing. 20 *W. R.* 49.

PLATE OR SEAL (*making or possessing a counterfeit—with intent to commit forgery*) *P. C. S.* 473.

17. Counterfeit seals and forged documents were found in the prisoner's possession; and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently. 2. *W. R.* 5.

18. Where several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that under S. 473 P. C. there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal unless it appeared that several such seals were in their possession for the purpose of committing one particular forgery. 13 *W. R.* 16.

REPUTATION (*forgery for the purpose of harming any one's*) *P. C. S.* 469.

19. Where a draft petition was prepared with the intention of being used as evidence of a matter, it was held that it fell within the terms of S.29 of the P. C.; and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within S. 469. P. C. 10. *W. R.* 61.

WILL (*destroying or cancelling &c a*) *P. C. S.* 477.

20. The tearing up of a pottah is the destruction of a valuable security within the meaning of S. 477 P. C. 3 *W.* 38.

WILL OR VALUABLE SECURITY (*forgery of a*) *P. C. S.* 467.

21. The forging of a document which purports on the face of it to be a copy only, and which, even if a genuine copy, would not authorise the delivery of movable property, is not punishable under S. 467 P. C. 5 *B. R.* 56.

IX. EXCEPTIONS.

CHILD (*act of a—above 7 and under 12 years of age, who has not sufficient maturity of understanding*) *P. C. S.* 83.

1. In construing S. 83 P. C. the capacity of doing that which is wrong is not so much to be measured by years, as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim, *militia supplet ætatem.* 1 *W. R.* 43.

COURT OF JUSTICE (*acts done under order of*) *P. C. S.* 78.

2. The arrest under civil process of a judgment-debtor going to a Court in obedience to a citation to give evidence, and made within the precincts of that Court, and with some show of violence and contempt of Court, does not entitle the officers making the arrest to protection under S. 78 P. C. 3 *W. R.* 53.

INTOXICATION (*when it prevents acts or omission from being an offence*) *P. C. S. S.* 85 & 86.

3. Drunkenness does not in the eye of the law make an offence the more heinous, though it is no excuse, and an act which if committed by a sober man is an offence, is equally an offence if committed by one when drunk, if the intoxication was voluntarily caused. 16 *W. R.* 36; 8 *B. L. R. App.* 21.

PRIVATE DEFENCE (*right of*)

4. There can be no right of private defence, either on one side or the other, in a case of premeditated riot. 7 *W. R.* 34.

5 The firing of a gun at person at a distance of twenty five yards, without a reasonable apprehension of danger, and without any necessity for so doing, is not justifiable by the right of private defence. 17 *W. R.* 46.

PRIVATE DEFENCE OF THE BODY (*when the right of—extends to causing death*) *P. C. S.* 100.

6. The legal right of private defence of the body and property is not exceeded

by a person who is attacked by another with a spear and who strikes a blow with a *lattee*, which results in the death of the party attacking; and such right of private defence of the body extends under S. 100 P. C. to the taking of life were grievous hurt is reasonably apprehended. 11 *W. R.* 41

7. The right of private defence of person and property was not allowed to be pleaded in a case where there was no fear of an assault such as is described in the clauses of S. 100 P. C., and where the prisoners used deadly weapons (spears) and killed two unarmed persons whom they found ploughing land which the prisoners believed to be theirs. 18 *W. R.* 30

PRIVATE DEFENCE OF THE BODY (*when the right of—only to causing less harm*) *P. C. S.* 101.

8. Dispute between two parties (the Mollahs and Shikdars) in which the Shikdars attacked and killed one of the Mollahs when exercising the right of re-taking their own property; three of the Shikdars being also wounded. The Shikdars were convicted of culpable homicide not amounting to murder, and rioting. As to the Mollahs, *Loch J.* was of opinion that they were guilty of voluntarily causing grievous hurt; while the majority of Court held that they were entitled to the protection conferred by S. 101 P. C. on those who, while exercising the right of private defence, caused their assailants any harm other than death. 3 *W. R.* 47

PRIVATE DEFENCE OF PROPERTY (*when the right of—extends to causing death*) *P. C. S.* 103

9. The right of private defence under S. 103 P. C. is restricted by S. 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence. 14 *W. R* 68

10. Held on the facts of the case, that the accused who were in peaceable possession of their property and were attacked while in such possession, did not exceed the right of private defence of property under S. 103 P. C. 14 *W. R.* 69.

PRIVATE DEFENCE OF PROPERTY (*when the right of—only to causing less harm.*) *P. C. S.* 104.

11. Where the offence which occasions the right of private defence of property is criminal trespass, the right of private defence under S. 104 of the P. C., only extends (subject to the restrictions of S. 99) to the voluntarily causing to the wrong-doers some harm other than death. 14 *W. R.* 74.

12. Where a person assisted by a friend retaliated severely on another, who trespassed into his house with the object of having intercourse with his wife, he was held to have committed no offence,—S. S. 96 and 104 justifying him in causing any harm short of death to the trespasser; and his friend was also acquitted as having aided him to commit no offence. 20 *W. R.* 36.

13. In an affray respecting land one of the aggressive party was killed. The prisoners who were exercising the right of private defence of property were acquitted by the jury of culpable homicide, but convicted of rioting. Held that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and not being rioters or members of an unlawful assembly, could claim the benefit of S. 104 P. C. 3 *W. R.* 41.

14. Where the accused, whose property had frequently been stolen, went out with a *lattee* to watch his property, and with the *lattee* struck a thief who died from the effects of the blows, it was held (having regard to the nature of

the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th. Exception to S. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by S. S. 97 and 104 of the P. C. and had not exceeded the legal right of private defence of property. 12 *W. R.* 15

PRIVATE DEFENCE OF PROPERTY (*how long the right of—continues*) *P.C.S.* 105.

15. Where A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the Police, it was held that the conduct of B and his servants, in confining A could not be supported on the ground that they were exercising the right of private defence of property, under S. S. 97, 104 and 105 of the P. C. 13 *W. R.* 165.

SLIGHT HARM (*acts causing*) *P. C. S.* 95.

16. Conviction and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing Government waste ground—came within the meaning of S. 95 of the P. C. and did not, therefore, amount to an offence. 5 *B. R.* 35.

THREATS (*acts done under*) *P. C. S.* 94.

17. To obtain the benefit of the exception allowed by S. 94 P. C., it must be shown that the prisoners were compelled to act as they did from apprehension that instant death would be the consequence of a refusal. 10 *W. R.* 48.

X. EXPLANATIONS.

PUBLIC SERVANT. *P. C. S.* 21.

1. An Engineer who receives and pays to others municipal moneys is a public servant within the meaning of S. 21, Cl. 10 of the P. C. although he may not have the power of sanctioning the expenditure of such moneys. 6 *B. R.* 64.

2. An occasional or supernumerary peon appointed under the orders of the Board of Revenue in accordance with S. 6 Act V. of 1863 (B. C.) and paid under that section by fees whenever employed, is a public servant under cl. 9 S. 21 of the P. C., and as such may be tried of receiving an illegal gratification under S. 161 of that Code. 16 *W. R.* 27.

3. The words "inferior ministerial officer" refer to public servants of a lower grade than an Assistant Superintendant of Police. 2 *N. W. P. R.* 288.

SECURITY (*Valuable*) *P. C. S.* 30.

4. A settlement of accounts in writing, though not signed by any person, is a "valuable security" within the definition of S. 30 of the P. C. 2 *M. R.* 247.

5. Held that the copy of a lease is not "a valuable security" within the meaning of S. 30 P. C. 4 *B. R.* 28.

XI. FALSE EVIDENCE.

EVIDENCE (*using—known to be false*) *P. C. S.* 196.

1. A person who uses in Court false documents as true besides swearing to their authenticity, may be convicted under S. 196 P. C. only, and not under S. 471 also. 3 *W. R.* 17.

2. Where a prisoner produced as evidence an account book, one page of which had been fraudulently abstracted, and another substituted for it:—Held, that he was not guilty of the offence of attempting to use, as genuine, fabricated evidence, unless he new of the forgery and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered. 7 *W. R.* 23.

FALSE EVIDENCE (*fabricating*) *P. C. S.* 192.

3. The accused put in an application, which he verified before a Judge of a Court of Small Causes praying for a re-hearing of his case under S. 119 Act VIII. of 1859, and alleging that he was not aware that a suit had been instituted or a decree given against him, though he had authorized a pleader to defend the suit. Held, *by Loch J. (Glover J. Contra)* that the accused was not guilty of an offence under S. 192 of the P. C. nor liable to punishment under S. 24 Act VIII of 1859. The offence contemplated by the former law requires that the document containing the false statement should be made with the intention that it may appear in evidence. The latter law does not require that an application under S. 119 Act VIII. of 1859, such as the accused made, should be verified. 10 *W. R.* 31; 2 *B. L. R. A. J.* 1.

FALSE EVIDENCE (*giving*) *P. C. S.* 191.

4. To constitute the offence of giving false evidence under S. 191 of the P. C. it is not necessary that the false evidence given should be material to the case in which it is given. *Aliter* under S. 192. 5 *B. R.* 68.

5. The words of S. 191 of the P. C. are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section, if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly knowing it to be false and with the intention of deceiving the court and of leading it to be supposed that that which he states is true. 16 *W. R.* 37.

6. Before an accused person can be convicted of giving false evidence, it must be proved that he made the statements which are the basis of the charge, and further that he made them with the necessary criminal intention. 9 *W. R.* 52.

7. The making of a false statement without knowledge as to whether the subject matter of the statement is false or not, is legally a giving of false evidence. 2 *W. R.* 47.

8. The true rule in a case of giving false evidence is that no man can be convicted of such offence except on proof of facts which, if accepted as true, show not merely that it is incredible, but that it is impossible, that the statements of the party accused made on oath can be true. 11 *W. R.* 25.

9. Upon a prosecution for giving false evidence the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention, and if the statement was false, and known by the accused to be false, it may be presumed that, making it, the accused *intentionally* gave false evidence. 3 *N. W. P. R.* 133.

10. Where a person is charged with making two contradictory statements, it must be proved by direct evidence that both statements were made, and there must be an enquiry as to which statement is untrue and whether the accused wilfully made the statement which is supposed to be false, knowing it to be false. 12 *W. R.* 31; 3 *B. L. R. A. J.* 36.

11. A Court cannot take cognizance of a bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence. 3 *N. W. P. R.* 166.

12. A person who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him.

A charge "that he on or about the 15th. April 1871, gave false evidence," is not sufficiently specific.

Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. 3 *N. W. P. R.* 314.

13. when a party makes a false statement while legally bound by solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence. 3 *M. R. App.* 30.

14. A conviction on a charge of giving false evidence was set aside, the alleged conflicting statements having been made after a lapse of 4 years, and there being no proof of deliberate intention to give false evidence, which was held to be the gist of the offence. 6 *W. R.* 89.

15. A Sub-Registrar is competent, for any purpose contemplated by Act XX * of 1866, to examine any person; and any statement made by such person before an officer in any proceedings or enquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution. 6 *W. R.* 81.

16, A conviction for false evidence was upheld in a case where the false statement was to stop the prosecution of certain Brahmins on a charge of riot or dacoity and murder. 7 *W. R.* 51.

FALSE EVIDENCE (*intending to procure conviction of capital offence*) *P. C. S.* 194.

17. It is not necessary, under S. 194 P. C. that the false evidence which is given should be evidence given in a Court of justice. Such statement, if made to a Police Officer, would amount to the offence of giving false evidence as defined by S. 191, taking S. 118 of the Code into consideration. 20 *W. R.* 41.

FALSE EVIDENCE (*intending to procure conviction of offence punishable with transportation or imprisonment P. C, S.* 195.

18. The prisoner was convicted under S. 195 of the P. C. of fabricating false evidence with intent to procure the conviction of a certain person of an offence. The prisoner's act was committed in a most public manner and was not calculated to lead to the conviction of the person, nor did it appear that the prisoner took any steps to secure his conviction. Held, that the conviction of the prisoner could not be sustained. 5 *N. W. P. R.*, 188.

* See Act VIII. of 1871.

FALSE EVIDENCE (*punishment for*) *P. C. S.* 193.

19. It is essential to a charge under S. 193 P. C. that the prosecution should make out that there was on the date stated in the charge a judicial proceeding pending, and that the prisoner in the course of that proceeding made the statement alleged to be false. The particular stage of the proceeding should be mentioned in the charge. 10 *W. R.* 37 ; 1 *B. L. R. A. J.* 13.

20. The materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding ; and an indictment under S. S. 191. 193 of the P. C. though it does not allege materiality, is good if it alleges sufficiently the substance of the offence. 1 *M. R.* 38.

21. A Hindu who has become a convert to Christianity, is not under a legal obligation to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under S. 193 of the P. C. 4. *M. R.* 185.

22. The making of a false return of service of summons is an offence punishable, not under S. 181, but under S. 193 of the P. C. and is cognizable by the Court of Session alone. 8 *W. R.* 27.

23. A Conviction may be had for giving false evidence under S. 193, P. C. even if the evidence be given in matters not judicial (such as before the Collector acting in his fiscal capacity under Reg. XIX of 1814), but it must be proved that the false statement was made under the sanction of the law. 14 *W. R.* 24.

24. The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within S. 193. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must in each case be considered before it can be held that the offence has been committed. 9 *W. R.* 25, 52.

25. Where a witness was at the beginning of the day solemnly affirmed once for all to speak the truth in all the cases coming before the Court that day :—Held that he might be convicted under S. 193 of the P. C., of giving false evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered. 2 *M. R.* 43.

26. An enquiry by an Assistant Magistrate with a view to tracing the writer of an anonymous letter addressed to him, charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of false evidence is punishable under S. 193 P. C. 5 *W. R.* 72.

27. In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated as was the fact that the prisoner had committed the murder : Held that such witness was guilty under S. 193, and not under S. 194, of the P. C., as he did not know that he would cause a conviction for murder. 3 *B. L. R. A. J.* 35.

28. The examination of a complainant in reference to the matter of his petition of complaint is an investigation directed by law, and therefore a stage of a judicial proceeding.

Consequently, if in the course of that examination false evidence is intentionally given by the complainant, he is legally chargeable with the offence described in S. 193 of the P. C. 4 *N. W. P. R.* 6.

29. The accused was convicted of intentionally giving false evidence in a judicial proceeding, in having, as a witness, therein made, on a solemn affirmation, a false statement. The proceedings in the trial at which the alleged false evidence was given were subsequently annulled, in consequence of the sanction for the prosecution being insufficient.

Held that the conviction of the accused must be reversed, as the false statement was not made in a stage of a judicial proceeding. 8 *B. R.* 37.

30. A witness falsely deposing in another's name should be charged with giving false evidence, under S. 193, and not with cheating by personation, under S. S. 416 and 419 Penal Code. 1 *B. R.* 89.

31. The prisoner, a vakil, presented a vakalatnamah in the District Moonsiff's Court signed by the defendant in a civil suit authorizing the prisoner to appear for the defendant. The vakalatnamah falsely purported to have been executed before the Adighari of the village and to bear the signature of the Adighari. The prisoner was convicted under S. 193 P. C. Held that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody. 5 *M. R.* 373.

FALSE STATEMENT IN DECLARATION (*which is by law receivable in evidence*) *P. C. S.* 199.

32. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of S. 199 P. C., nor is the witness bound to make a declaration under S. 191. 4 *M. R.* 185.

XII. HUMAN BODY (OFFENCES AFFECTING)

ABDUCTION. *P. C. S.* 362.

1. A conviction of abduction quashed, no force or deceit having been practised on the person abducted 2. *W.* R. 7.

ASSAULT *P. C. S.* 351.

2. Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately, to offer violence, or in the language of the Indian Penal Code, is "about to use criminal force" to the person threatened, constitute, if coupled with a present ability to carry such intent into execution, an assault in law. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault, or on the other hand, may prevent them from being held to amount to an assault.

In order to have this latter effect the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force. 1 *B. R.* 205.

ASSAULT (*on public officer generally*) *P. C. S.* 353.

3. A Collectorate peadah who had been deputed to keep the peace during a distraint was assaulted by the prisoners while on his road to execute the order with which he had been entrusted, the prisoners attempting to deprive him of his purwannah. Held, that they were rightly convicted under S. 353 of assaulting a public servant while in the execution of his duty. 13 *W. R.* 49.

CONFINEMENT, *(wrongful)* *P. C. S.* 340.

4. In no case is a Police officer justified, by S. 152 * of O. Cr. P. C., in detaining a person for a single hour, except upon some reasonable ground justified by all the circumstances of the case. 6 *W. R.* 88.

5. Held by the majority of the Court *(Kemp, J. dissenting)* that the prisoners were rightly convicted of wrongful confinement of a woman, the facts of the case showing that she never went willingly to the house of the prisoners, and was not willing inmate while she was there. 4 *W. R. F. B. R* 3.

6. Four persons, two of them Police Constables and two village officers were convicted of wrongful confinement and abetment thereof. The defendants, the village officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing :—Held, a good conviction. 5 *M. R. App.* 24.

7. The time during which a party is kept in wrongful confinement is immaterial, except with reference to the extent of punishment. 6 *W. R.* 88.

HURT.

CAUSE HURT *(administering drug with intent to)* *P. C. S.* 328.

8. The words "other things" in S. 328 P. C., must be referred to the preceeding words, and be taken to mean "unwholesome or other thing", and not other thing simply. 1 *W. R.* 7.

9. Held by the majority of the Court *(Seton Karr J. dissenting)* that the offence of administering deleterious drugs, when life was not endangered, is punishable under S. 328 P. C., and not as for grievous hurt under S 326. 4 *W. R.* 4.

10. Held that a person who placed in his toddy-pots juice of the milk-bush, knowing that if taken by a human being it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under S. 328 P. C. of "causing to be taken an unwholesome thing with intent to injure;" and that S. 81, which says that "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case 5 *B. R.* 59.

CAUSING HURT *(voluntarily)* *P. C. S.* 321.

11. Where a wife died from a chance kick in the spleen inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself and by his conduct immediately afterwards that he had no intention or knowledge that the act was likely to cause hurt endangering human life.—Held that the husband was guilty of an offence under S. S. 319 and 321 P. C. and not of an offence under S. S. 320 and 322. 8 *W. R.* 29.

12. A disability for a fortnight is punishable for voluntarily causing hurt. 1 *W. R.* 9.

CAUSING HURT *(voluntarily—on provocation)* *P. C. S.* 334.

13. Causing hurt on grave and sudden provocation to the person giving the provocation is chargeable as on offence under S. 334, and not under S. 324, P. C. I *B. R.* 17.

* See S. 124 N. Cr. P. C.

CAUSING HURT(*voluntarily—to extort confession, or to compel restoration of property*) *P. C. S.* 330.

14. To bring a case under S. 330 P. C. it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offence or misconduct punishable under the Indian Penal Code. That section, therefore, does not apply to a case where the confession extorted had reference to a charge of witch craft. 13 *W. R.* 23.

15. A charge may be made under S. 330 of causing hurt for the purpose of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement, or a confession having reference to an offence or misconduct ; and whether that offence or misconduct has been committed is wholly immaterial. 20 *W. R.* 41.

CAUSING HURT, VOLUNTARILY (*punishment for*) *P. C. S.* 323.

16. The prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and after she was down, slapped her with his open hand. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. Held, under the circumstances, that the prisoner was guilty of causing hurt and not of culpable homicide not amounting to murder. 5 *W.R.* 97.

17. Where a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under S. 323 P. C.) and extortion (S. 384), although the accused ought to have been charged under S. 327, and tried by the Court of Sessions, the High Court declined to interfere under S. 404 * Cr. P. C., and direct a new trial, believing that substantial justice had been done in the case. 18 *W. R.* 8.

18. Where, according to the prisoner's own confession (which was the only direct evidence against her,) she, with a view to chastising the deceased, her daughter of 8 or 10 years of age, for impertinence, but without any intention of killing her, gave her a kick on the back and two slaps on the face the result of which was death. Held that the conviction should be under S. 323 of the P. C. of voluntarily causing hurt, and the punishment one year's rigorous imprisonment. 8 *W. R.* 29.

HURT, GRIEVOUS, *P. C. S.* 320.

19. To establish a charge of grievous hurt, it is not necessary to prove that the accused struck the complainant so severely as to endanger the latter's life. 18 *W. R.* 22.

20. When there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault, will or can cause death, the offence is not culpable homicide not amounting to murder, but grievous hurt. 2 *W. R.* 39.

21. There must be evidence to prove that hurt as described in S. 320 P. C. as grievous hurt has been caused before a conviction can be had under above section. 12 *W. R.* 25.

22. A disability for 20 days constitutes grievous hurt. 1 *W. R.* 9.

23. Where bone fractures have been caused in addition to other injuries, the

* See S. 297 N. Cr. P. C.

offence committed is grievous hurt triable by a Court of Session, and not hurt cognizable by a Magistrate. 5 *W. R.* 65.

24. When the result of a joint attack by several persons on one party is fracture of the arm of the party assaulted, the offence committed is grievous hurt and not assault; and as the attack was made in furtherance of a common object; all are equally guilty of the same offence. 5 *W. R.* 12.

CAUSING GRIEVOUS HURT (*by rash act*) *P. C. S.* 338.

25. Defendant was convicted under S. 338 P. C. of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town between the hours of 7 and 8 p. m. That the carriage was being driven at an ordinary pace and in the middle of the road; that the night was dark, and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father an old deaf man, and that complainant's father was thereupon knocked down, run over and killed. Held, upon a reference, that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed. 6 *M. R. App.* 32.

CAUSING GRIEVOUS HURT (*on provocation*) *P. C. S.* 335.

26. A person who, by a single blow with a deadly weapon, kills another entering at dead of night into a dark room where he and his wife were sleeping separately for the purpose of having criminal intercourse with her.—Held guilty of causing grievous hurt on a grave and sudden provocation. 3 *W. R.* 55.

27. Causing grievous hurt on grave and sudden provocation is punishable under S. 335 P. C. without any intention or knowledge of likelihood of causing such hurt. 4 *W. R.* 21.

CAUSING GRIEVOUS HURT (*Voluntarily*) *P. C. S.* 322.

28. Where, in a case of robbery attended with death, there was no intention, of causing death or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery, to voluntarily causing grievous hurt in committing robbery. 6 *W. R.* 16.

29. In cases of hurt or grievous hurt, the question should be considered, as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence. 2 *W. R.* 59.

KIDNAPPING.

CHILD (*kidnapping—to steal from its person*) *P. C. S.* 369.

30. The offence described in S. 363 P. C. is included in that described in S. 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section. 8 *W. R.* 35.

GUARDIANSHIP (*kidnapping from lawful*) *P. C. S.* 361.

31. To bring a case under S. 361 P. C., there must be a taking or enticing of a child out of the keeping of the lawful guardian without his consent. 4 *W. R.* 6; 10 *W. R.* 33.

32. The consent of a kidnapped person is immaterial; and is not necessary for a conviction under S. 361 P. C. that the taking or enticing should be shewn to have been by means of force or fraud. 2 *W. R.* 5; 62; 7 *W. R.* 36.

33. An enticing away of a child playing on a public road is kidnapping from lawful guardianship. 7 *W. R.* 98.

34 The conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. 1 *W. R.* 45.

KIDNAPPING (*punishment for*) *P. C. S.* 363.

35. To constitute the offence of kidnapping, under S. 363 P. C., it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is the guardianship of a person who is lawfully entrusted with the care or custody of a minor. 2 *N. W. P. R.* 286.

36. A person in carrying off, without the consent of her lawful guardian, a girl to whom he was betrothed by his father, who, after permitting her to reside occasionally in his house, suddenly changed his mind and broke of the marriage, is guilty of kidnapping from lawful guardianship, punishable under S. 363 P. C. 4 *W. R.* 7.

PERSON, KIDNAPPED (*concealing or confining*) *P. C. S.* 368.

37. S. 368 P. C. refers to some other party who assists in concealing any person who has been kidnapped and not to the kidnappers. 6 *W. R.* 17.

38. The mere fact of a girl being received into a house and retained there by the owner, even after he may have become aware or found reason to believe that she had been kidnapped, does not amount to concealment of her, unless an intention of keeping her out of view be apparent. 5 *N. W. P. R.* 133.

39. The mere circumstance of a girl, who had been kidnapped, staying in the house of a person for a day or two, does not warrant the conclusion that she was wrongfully concealed by that person, with the object of baffling any search that might be made for her. 5 *N. W. P. R.* 189.

40. Where a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under S. 363 P. C. only, and of the latter under S. 368 only while the separate conviction of both under S. 366 was quashed. 7 *W. R.* 56.

WOMAN (*kidnapping or abducting a—to compel her marriage &c.*) *P. C. S.* 366.

41. There can be no conviction of the offence of kidnapping under S. 366 P. C., unless it is proved that the accused has taken the girl out of the keeping or custody of her lawful guardian without her consent. 16 *W. R.* 43

42. The abduction of a girl under 16 years of age with intent to marry, &c., without the consent of her lawful guardian, is punishable under S. S. 363 and 366 P. C. The consent of the kidnapped person is immaterial, nor is it necessary to show that the taking or enticing away was by force or fraud. 3 *W. R.* 9; 15.

PROSTITUTION.

MINOR (*buying of any—for purposes of prostitution*) *P. C. S.* 373.

43. The prisoner was tried upon a charge of having obtained possession of Dewalath Bee, a minor, aged ten years, with intent that she should be used for an unlawful and immoral purpose, that is to say, for the purpose of illicit intercourse, and having thereby committed an offence under S. 373 P. C.

The evidence showed that the prisoner met Dewalath Bee, a girl 11 years old, in a street at Triplicane and promised to give her a pice if she would accompany him into an uninhabited house close by and allow him to have sexual intercourse

with her. The girl went willingly with the prisoner, and both were detected in the act of having sexual intercourse. The girl had gone out without permission, had not attained the age of puberty, and the evidence tended to show that the girl had not before had sexual connexion. The Jury convicted the prisoner:

Held, by the High Court, that the case proved against the prisoner did not make out the offence charged. 5 *M. R.* 473.

MINOR (*selling of any—for purposes of prostitution*) *P. C. S.* 372.

44. The prisoners were convicted, the one of disposing of, and the other of receiving two, children, females under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls:—Held that offences under S. S. 372 and 373of the P. C. had been committed, and that the prisoners were properly convicted. 5 *M. R.* 415.

45. Held, that the dedication of a minor girl under the age of 16 years, to the service of a Hindoo temple, by the performance of the shej ceremoney, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor, knowing it to be likely that she would be used for the purpose of prostitution, within the meaning of S. 372 P. C. 6 *B. R.* 60.

RAPE. *P. C. S.* 375.

46. Held to be improbable, and physically impossible, that a girl of tender age should be killed by any violence in rape and not show any external signs of violence. 1 *W. R.* 29.

47. Sexual intercourse by a man with a woman without her free consent *i. e.* a consent obtained without putting her in fear of injury, amounts to rape; and the judge should leave the question to the jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory. 1 *W. R.* 21.

RAPE (*punishment for*) *P. C. S.* 376.

48. The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrosity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female. 6 *W. R.* 59.

RESTRAINT (*wrongful*) *P. C. S.* 339.

49. Where the accused prevented the complainants from proceeding in a certain direction with their carts, and exacted from them a sum of money on a false plea: Held, that the accused were guilty of wrongful restraint, and not of theft. 10 *W. R.* 35.

50. Where a Police Officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under S. 339 P. C. 10 *W. R.* 20.

SLAVERY.

KIDNAPPING IN ORDER TO SUBJECT PERSON TO GRIEVOUS HURT, SLAVERY &c. *P.C. S.* 367.

51. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to

dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or a jailor. 3 *N. W. P. R.* 146.

SLAVE (*buying or selling & a*) *P. C. S.* 370.

52. The Sessions Judge was held bound to try the accused upon his commitment by the Deputy Magistrate on a charge, under S. 370 P. C. of having detained a woman against her will as a slave. 16 *W. R.* 63.

XIII. LAWS, LOCAL (OFFENCES UNDER)

ACT (*Lord's Day*)

1. The Lord's Day Act does not extend to criminal cases in British Burmah. A was convicted and fined for the breach of an Abkari Rule. Held, the conviction could not be supported, on the ground that the Abkari Rule had not the force of law. 1 *B. L. R. A. J.* 17.

A. D. 1814.—1. (*Bombay Regulation*)

2. Held that an action of trespass for false imprisonment lay against a Magistrate who proceeded without jurisdiction to convict a tailor charged before him under Bombay Rule, Ord., and Reg. I. of 1814 for "misbehaviour as a domestic servant," there being no information or evidence on oath of the offence charged, as required by the Regulation, as well as by Act II. * of 1839; and the plaintiff not being a *domestic servant*, or any servant within the scope of the Regulation, and when called upon to plead, having stated that he left the service because there were wages due to him from his employer; upon which statement he was convicted without any proper investigation into the truth of it. 3 *B. R. App.* 1.

A. D. 1827—XII. (*Bombay Regulation*)

3. A notice prohibiting general traffic over certain level-crossings on a railway, provided for particular villages, forbidden, as not falling within the scope of Reg. XII of 1827, S. 19, cl. 1 * and 6.* 8 *B. R.* 23.

A. D. 1827—XXI. (*Bombay Regulation*)

4. Where more than one person is convicted under S. 4 Reg. XXI. of 1827, of keeping smuggled opium, each of the convicts is liable to the whole penalty therein imposed, viz., the forfeiture of double the value of the opium, and double the amount of the duty leviable thereon. 1 *B. R.* 50; 7 *B. R.* 39.

A. D. 1843—XI. (*Bombay Act*)

5. A Mahalkari invested with the powers of a 2nd class Subordinate Magistrate cannot issue a summons under S. 8 of Act XI of 1843, nor can a person be convicted under S. 174 P. C. for having disobeyed such a summons so issued. 8 *B. R.* 19.

A. D. 1850—XXVI. (*Bombay Municipal Act*)

6. The chairman of Municipal Commissioners appointed under Act XXVI of 1850, although a public servant, is not legally competent as such to issue an order for attendence before him. Held, accordingly, that disobedience of such an order was not an offence within S. 174 P. C. 5 *B. R.* 33.

* Repealed by Act XVII of 1862.

7. Municipal Commissioners appointed under Act XXVI of 1850 have not by that Act, conferred upon them, nor are they entitled to assume, judicial powers with reference to breaches of Rules or Bye-laws made by them under that Act.

The authority to try offenders against such Rules or Bye-laws is, by S. 10, vested in the Magistrates of the country, and Subordinate as well as other Magistrates have jurisdiction to try such offenders.

Rules made under the above Act which purport to give the managing committee of such Municipal Commissioners power to try offenders against such Rules, or to levy fines upon them, are *ultra vires* and illegal. 5 *B. R.* 10; 8 *B. R.* 39.

8. A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence, and it is an error to hold that a person cannot be tried for an offence under Act XXVI of 1850, because he has paid a fine under S. 6 of Act III.* of 1857. 7 *B. R.* 55.

9. Where accused was convicted, under Act XXVI of 1850, of disobedience of an order made by the Municipal Commissioners of Poona, and was sentenced to pay a fine of 20 rupees, and (eight days' time being allowed him within which to comply with the order) a further fine of two rupees for each day during which he should continue wilfully to disobey such order, the latter part of the sentence was reversed by the High Court, as being illegal. 5 *B. R.* 103.

A. D. 1850—XXXV. (*Bombay Ferries' Act*)

10. On a reference by a Session Judge, a conviction and sentence by a District Magistrate, under the Bombay Ferries' Act, for conveying passengers for hire from Urun to Bombay was reversed, as the act charged did not constitute an offence under any section of the Act. 3 *B. R.* 41.

A. D. 1851—VIII. (*Bengal Act*)

11. To justify a conviction under S. 6 Act VIII of 1851 for illegal collection of a toll on a public road, the road must be a public road within the meaning of S. 2 of the Act. 6 *W. R.* 48.

A. D. 1856—XXI. (*Excise Act*)

12. The Excise Act XXI of 1856 contains no provision for the punishment of abetment. 7 *W R.* 53.

13. According to S. 38 Act XXI. of 1856, no conviction can be had under S. 50 against a person whose license has not been recalled. 16 *W. R.* 59.

14. Under S. 43 Act XXI. of 1856, only persons holding licenses, and not their servants, are subject to the penalties specified in the section. 8 *W. R.* 4.

15. Where a person sells liquor in contravention of and under color of a license which stands not in his own name but in that of the person for whom he is the recognized agent, he cannot be allowed to evade the provisions of S. 43 of Act XXI of 1856 by setting up that it is not a license to himself. 19 *W. R.* 34.

16. The provisions of S. 61 † O. Cr. P. C. as amended by Act VIII ‡ of 1869, are not applicable to fines and forfeitures under Act XXI of 1856, so as to allow of imprisonment and distress going on simultaneously. 17 *W. R.* 7.

17. Where opium was found in the possession of a person who was a servant of

* See. S. 12 Act I of 1871. † See. S. 307 N. Cr. P. C. ‡ Repealed by Act X of 1872.

the accused, and who alleged that he obtained it from the wife of the accused, and that the wife had purchased it from an opium cultivator, it was held that the accused could not be convicted under S. 53 of Act XXI of 1856, as it had not been shown that the purchase by his wife was authorized by the accused, and therefore her possession of the opium or that of the servant could not be considered the possession of the accused. 20 *W. R.* 54.

A. D. 1860— (Presidency Towns Police Amended Act)

18. To escape from custody under civil process is not a criminal offence within the meaning of S. 8 of the Presidency Towns Police Amendment Act of 1860.

Quere. Whether such an escape without force is a mis-demeanour at Common Law. 6. *B. R.* 15.

A. D. 1860—XXI. (*Madras Act*)

19. Certain persons were convicted under S. 5 Act XXI of 1860 of manufacturing and selling gunpowder without a license, and sentenced to fine or in default imprisonment. S. 44 of the Act provides a special procedure for levying the fine by distress. Held, that the sentence was legal, the Act giving power to imprison or fine upon conviction· 5 *M. R. App.* 24.

A. D. 1862—IX. (*Registration Act B. C.*)

20. Money received by a Mohurrir, appointed under the Registration Act IX. (B. C.) of 1862, by way of fees for registering deeds, is money entrusted to him as a public servant. 20 *W. R.* 49.

A. D. 1864—III. (*Bengal Municipal Act*)

21. The Municipal Authorities have no power under S. 57 Act III (B. C.) of 1864, to impose a fine on a person for blocking up a drain which is not shewn to be public property or along the side of any high-way. 14 *W. R.* 23.

22. In a case in which accused was convicted of a nuisance under S. 66 Act III (B. C.) 1864. and sentenced to pay a fine of Rs. 10, and further fined Rs. 2 a day for every day the nuisance continued unabated, the High Court (following a precedent cited) set aside only so much of the order as inflicted the fine prospectively. 20 *W. R.* 64.

23. Where the owner of certain land lived in another district and was not proved to have suffered the land to be in a filthy state, and the Municipal Commissioner fined his mooktear under S. 67 Act III of 1864, (B. C.) which empowered him to fine *either the owner or occupier:* Held that the discretion which that section gave had not been properly exercised-proceedings quashed, and refund of fine directed. 16 *W. R.* 60.

24. The words " uses any premises " in S. 77 Act III of 1864 mean using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. 16 *W. R.* 4.

A. D. 1864—III. (*Madras Act*)

25 *Prima facie*, toddy is fermented palm juice. A conviction under S. 21 of Act III. of 1864, for selling toddy without a license upheld, although no evidence was given as to whether fermentation had taken place. 5 *M. R. App.* 36.

26. Sweet palm juice, which by exposure to the operation of natural causes ferments and become toddy is as much manufactured by the person who expose it as if the same result were produced by the process of distillation. 5 *M. R. App.* 26.

27. The Magistrate convicted the accused under S. 21 of Act III. of 1864, and directed the confiscation of certain arrack found in his possession. Held, that the accused being a licensed vendor, the arrack was not liable to confiscation. 5 *M. R. App.* 41.

28. Upon a conviction under S. 22 of Act III of 1864 for conveying liquor without valid permits, it appearing that the defendants produced permits by the Taluk Abkarry Renter covering the amount of liquor which was being conveyed, but made out in the names of third parties who were not present when the liquor was seized, but on whose behalf the liquor was at the time of seizure being conveyed Held, that the permits were valid and the conviction was bad. 5 *M. R. App.* 29.

29. Prisoners were sentenced to fines under S. S. 21 and 22 of Act III of 1864, and in default of payment of fine to rigorous imprisonment. Held, that a fine in these cases was the only assignable punishment, and, by S. S. 30, 31 and 32 a specified procedure is laid down for the levy of the penalty. S. 64 of the Penal Code had no application. 6 *M. R. App.* 40.

A. D. 1864—IV. (*Bengal Municipal Act*)

30. A Joint Magistrate, though Vice-chairman of a Municipal Committee, can impose fines under Act IV. (*B. C.*) of 1864.

The Joint Magistrate should make a record of his proceedings before passing sentence.

The obstruction of a drain by a tree blown down by the cyclone is not an obstruction within the meaning of S. 57 of that Act.

The owner of ground is answerable under S. 67, whether his ground was made dirty by himself or another. 3 *W. R.* 33.

31. A is punishable if his land is made filthy by nuisances committed by other persons. But if A has sub-let his lands to others, the actual occupiers of the land are liable. 3 *W. R.* 57.

A. D. 1864—V. (*Bengal Council Act*)

32. A conviction under Act V (B. C.) of 1864, cannot be had unless it is charged and proved that the accused *wilfully* obstructed the navigation. 11 *W.R.* 18.

A. D. 1864—V. (*Bombay Act*)

33. Held that an order passed by a Mamlutdar under Act V of 1864 directing the accused to keep open a right of way to a privy, being in reality an injunction to refrain from disturbing the possession of the parties, was therefore, within the jurisdiction of the Mamlutdar. 5 *B. R.* 46.

34. Conviction and sentence for disobeying an order made by a Mamlutdar under Act V of 1864, directing the accused to keep a gateway open, reversed, as the Mamlutdar was not empowered under that Act to make the order. 3 *B. R.* 53 ; 5 *B. R.* 21.

A. D. 1864—VII. (*Bengal Salt Act*)

35. A was convicted under S. 16 Act VII. (B. C.) of 1864; and B under S. 21 of the same Act, the former with having had in his possession a salt not covered by a rowannah, and the latter with having sold to A the said salt. Held that the conviction of A under S. 16 was illegal, the salt in his possession

having been a portion of salt for which B had taken out a rowannah ; but that the conviction of B under S. 21 was proper, as he had failed to certify the salt sold by him to A on the back of the rowannah. 18 *W. R.* 64.

36. If salt exceeding five seers is found within the limits prescribed by S. 12 of Act VII. of 1864 (B. C.), unprotected by a rowana or pass, the salt is contraband. and liable to seizure, and the parties transporting it are punishable under S. 16. It matters not whether any attempt or intention to sell is proved or not. 6 *B. L. R.* 381.

A. D. 1864—XI. (*Bengal Act*)

37 S. 77 of Act XI (B. C.) of 1864 refers to the burning of bricks for trading purposes, and not to cases where bricks are made for the particular use of the person burning them: such person need not take out a license for that purpose. 20 *W.R.* 65

A. D. 1865—VI. (*Bengal Act*)

38. The proceedings under S. 31 and 32 of Act VI (B C.) of 1865, for the cancelment of contracts entered into by coolies are distinct proceedings by two distinct officers. Until the inquiry under S. 31 has been completed by the Magistrate, and it has been ascertained by him that the wages of the laborers are more than 6 months in arrears, the Protector of Laborers is not competent to act under S. 32. The inquiry under S. 31 must be conducted in accordance with S. 444 * O. Cr. P. C. 12 *W. R.* 29.

A. D. 1865—VII. (*Bengal Act*)

39. No person is liable to any penalty under S. 1 Act VII of 1865 except a person who without a license uses a place or building as a slaughter-house either by letting it out for such purpose, or by employing servants and others for the purpose of killing cattle therein; but a person who may be the mere servant of a butcher killing cattle in a particular slaughter-house, or a butcher resorting accidentally or occasionally to a slaughter-house for the purpose of killing and killing an ox or sheep there, does not use the place as a slaughter-house within the meaning of S. 1 Act VII of 1865. 16 *W. R.* 4.

40. The length of notice to be given to persons holding licenses for carrying on slaughter-houses under Act VII. (B. C.) of 1865, must be determined in each case according to its own particular circumstances. 6 *W. R.* 77.

41, Held by *Jackson. J.*, (*Mitter. J. dissenting*)—The owner of a slaughter-house by giving it in lease to another, parts with his interest in it and ceases to have any power to allow or disallow the slaughtering of cattle therein, and therefore does not bring himself within the terms of S. 7 Act VII. of 1865, which describes no offence, but is merely a section for the levying of penalties. 14 *W. R.* 67.

A. D. 1865—X. (*Madras Act)*

42. Defendant was charged, under S. 108 of Act X of 1865, with having used a place not licensed by the Municipal Commissioners as a slaughter-house. The finding on the facts was that defendant slaughtered a sheep on his own premises for his own private purpose. Held no evidence of the offence charged. 6 *M. R.App.* 18.

43. The continuing of offensive trades in premises already used is not an offence under S. 114 of Act X. of 1865. The section only applies to the fresh dedication of premises to certain offensive trades. 5 *M. R. App.* 16.

* See S. 539 N. Cr. P. C.

A. D. 1866—III. (*Bombay Act*)

44. Held that the words "three miles" in Bombay Act III of 1866, S. 1. cl. 2, must be construed as three miles measured in a straight line along the horizontal plane, that being the most convenient meaning of the words, and the most capable of being ascertained. 4 *B. R.* 9.

A. D. 1866—VI. (*Bengal Act*)

45. Sagar Dutt was convicted before a Justice of the Peace, for using a warehouse &c, in the town of Calcutta, for the keeping and storing of jute, other than jute screwed for shipment, without a license, and for his said offence was fined Rs. 300, and adjudged to pay a further fine of Rs. 25 for every day after the conviction, in which the offence was continued. Held, that the conviction was bad. 1 *B. L. R. O. J.* 11.

A. D. 1867—III.(*Bengal Act*)

46. A sentence of rigorous imprisonment in default of fine, passed under Act II of 1867 (B. C.) was set aside, the notification of the Government extending the Act to Jungipore not having been published in three successive numbers of the Government Gazette. 18 *W. R.* 41.

A. D. 1867 III. (*Bombay Military Cantonment Act*)

47. In cases of convictions under S. S. 11 and 12 of the Military Cantonment Act III. of 1867, a simultaneous sentence of fine and imprisonment in default of the payment of the fine is illegal. Imprisonment in default of payment of fine can only be awarded, under S. 14 of the Act, in the event of no property sufficient for the payment of the fine being found. 7 *B. R.* 87.

A. D. 1867—VII. (*Bombay District Police Act*)

48. An order issued under S. 28 of the Bombay District Police Act VII. of 1867 need not be in writing,—disobedience of a verbal order given under that section is punishable, under S. 297. 7 *B. R.* 2.

A. D. 1867—VIII. (*Bombay Act*)

49. Conviction of a Police Patil for neglecting to report an encroachment made by the villagers on the public road reversed, as the circumstances of the case did not bring it within the provisions of S. 9 of Act VIII of 1867. 7 *B. R.* 88.

A. D. 1867—XXI. (*Bombay Act*)

50. Where a Magistrate sentenced a person, who had neglected to take out a license under Act XXI of 1867, S. 15, and Act XXIX of 1867, S. 3, to pay a fine of 10 rupees, and in default of payment to suffer 7 days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had, under the Act, no power to make such an order. 5 *B. R.* 44.

A. D. 1867—XXIX. (*Bengal Act*)

51. Under S. 15 Act XXIX of 1867, the fine to be imposed for non-payment of the tax cannot be less than the amount stated in the notice. 9 *W. R.* 62.

52. Under S. 3 Act XXIX of 1867, a person once fined for not taking out a license is not liable to a second fine or to any further demand for the tax. 9 *W. R.* 64.

A. D. 1868—IX. (*Bengal Act*)

53. A Magistrate is bound under S. 17 Act IX of 1868 to impose on every offender on conviction for not taking out a license, after notice served on him, a fine equal to twice the sum mentioned in the notice, and cannot remit any portion of the fine. The service under the Act must be personal, wherever personal service is practicable. 11 *W. R.* 13.; 2 *B. L. R. App.* 40.

A. D. 1868—XIV. (*Contagious Disease Act*)

54. The mere possession of a registration ticket under Act XIV of 1868 does not necessarily make the holder of it a registered public prostitute under that Act or the ruels framed by the Government of Bengal under the Act. The registration must be voluntarily, and the mere fact that a woman appears in answer to a summons issued by the Police and answers questions put to her is not sufficient to bring her within the Act or the rules. 12 *W. R.* 55; 3 *B. L. R. A. J.* 70.

A. D. 1869—III. (*Madras Act*)

55. Madras Act III. of 1869 confers no authority upon Revenew Officers to summon a Subordinate to attend for the purpose of carrying out a sale of land for arrears of Revenue. 5 *M. R. App.* 28.

A. D. 1871—III. (*Madras Act*)

56. S. 154 of Act III. of 1871 was not intended to apply to omissions to take out licenses. It applies to breaches of the Act which, in a Police-man's view are offences, and regarding which, if committed, within his view, one of two courses is open to him, viz. to arrest without warrant, or to lay an information before a Magistrate and apply for a summons or warrant. If he adopts the latter course, then S. S. 43 * and 66 † of the O. Cr. P. C. require that the information should be reduced to writing and given on oath, or solemn affirmation, before any process is issued thereon. S. 68 ‡ of the Code is limited to cases in which no complaint has been made, and the Magistrate *proprio motu* institutes a prosecution. 6 *M. R. App.* 50.

BYE—LAW.

57. Where the accused was convicted of having infringed a Bye-law of the Howrah Municipality, and was fined one rupee for the offence, and also to pay a daily fine of 2 rupees till he complied with the Bye-law, the High Court remitted the daily fine as illegal, but declined to exercise its extraordinary powers by setting aside the fine of one rupee which was inflicted for an offence actually committed. 18 *W. R.* 44.

SATL—LAW.

58. Being in possession of salt-earth from which salt may be manufactured with the object of making salt is an offence under the salt laws. 4 *M. R. App.* 55.

XIV. LAWS, SPECIAL (OFFENCES UNDER)

1. The fact that there is a special law to meet a particular offence (in this case, cattle trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under the Penal Code was established. 9 *W. R.* 70.

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* See S. 331 N. Cr. P. C. † See S. 140 N. Cr. P. C. ‡ See S. 142 N. Cr. P. C.

2. Where there is no provision in the Penal Code, and any other law (such as the Breach of Trust Law Act XIII * of 1850) provides punishment for an offence, any person committing such offence may be tried under that law. 14 *W.R.* 80.

A. D. 1850—XVIII. *Act*

3. Where a prisoner was convicted, and sentenced under S. 50 of Act XVIII of 1850, upon the charge of fraudulently secreting a post-letter, and on appeal such conviction and sentence were confirmed:—Held, that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion, both acts being connected and substantially a part of one criminal transaction. 1 *M. R.* 83.

A. D. 1854—XVIII. (*Indian Railway Act*)

4. A passenger by railway travelling in a carriage of higher class than that for which he has paid fare is not guilty of cheating under S. 417 P. C., but is indictable under the Railway Act XVIII. of 1854. 1 *B. R. A. J.* 140.

5. A Railway watchman was charged before a Head Assistant Magistrate with an offence under S. 26 of Act XVIII. of 1854. That charge was dismissed, but the Session Judge ordered a fresh trial. Held, that in so doing the Session Judge acted without jurisdiction. 6 *M. R. App.* 41.

A. D. 1856—XIII. (*Gaming Act*)

6. A person is "found gaming" within the meaning of S. 57 of Act XIII of 1856, who, having been seen gaming by an Inspector of Police, is shortly afterwards in a place adjoining the room in which he was seen gaming, apprehended by Police Constables acting under the direction of such Inspector 8 *B. R. O. J.* 1.

A. D. 1857—III. † (*Cattle Trespass Act*)

7. Held that the offences created by S. 13 of Act III of 1857 may be dealt with by the ordinary criminal tribunals, subject to the provisions of the Code of Criminal Procedure. 4 *B. R.* 13.

8. In the case of a conviction by a Subordinate Magistrate, under S. 18 Act III of 1857, of a person who, through neglect, permitted a public road to be damaged, by allowing his pigs to trespass thereon :—Held, on a reference by the District Magistrate, that the conviction was not illegal, because the land damaged was a public road; as the right to use a public road is limited to the purposes for which the road is dedicated. 4 *B. R.* 14.

9. Certain persons were convicted under S. 13, Act III. of 1857 and sentenced to 15 days' imprisonment and a fine, or in default imprisonment for the term of seven days. No provision is made in the Act for awarding imprisonment in default of payment of fine; but the prisoners were liable under the section to six months' imprisonment and a fine of Rs. 500. The High Court refused to interfere with the sentence passed. 5 *M. R. App.* 21.

10. The order contemplated by S. 62 ‡ O.Cr.P.C. is a particular and specific order addressed to a particular person or particular persons to do or abstain from a particular act or particular acts. That section does not empower a Magistrate to pass a general order to persons not to allow their cattle or horses to run at large on the public roads; nor can such an order be passed under Act III of 1857, which applies only to injury done by cattle to crops &c., and to the sides of public roads and embankments. 12 *W. R.* 36; 3 *B. L. R. A. J.* 45.

* Repealed by Act XVII of 1862. † See Act I of 1871. ‡ See S. 518 N. Cr. P. C.

A. D. 1859—VIII. (*Civil Procedure Code*)

11. A Dufflah hill tribe woman having refused to obey the Deputy Commissioner's order directing her to return to her husband's protection, the Commissioner of Assam directed that, in case she persisted, she should be taken across the border and put back into her own country. On a protest by way of appeal against th order of the Deputy Commissioner, the Judicial Commissioner referred the matt to the High Court for orders under Chapter XXIX * of the O. Cr. P. C. Held that this was not a case which could be referred under Chapter XXIX of that Code; that the order of the Deputy Commissioner was a judi order, not made in a criminal matter, but in a suit for restitution of conjugal right and as such appealable to the Judicial Commissioner; that the proper form of the order in such a case was that the woman should return to her husband and live with him; and that the only way in which such an order could be enforced was by imprisonment of the wife and attachment of her property, or both, under S. 200 Act VIII of 1859. 17 *W. R.* 13.

A. D. 1859—XIII *Act.*

12. Act XIII of 1859, relates to fraudulent breaches of contract, and does not apply where an advance has not only been worked off by a laborer, but an actual balance is due to him. 8 *W. R.* 69.

13. Act XIIIof 1859 does not apply to contracts for a domestic or personal service, but to contracts to serve as artificer, workman, or laborer. 3 *B. L. R. A. J* 32; 12 *W. R.* 26.

14. A breach of contract to supply wood does not fall within the purview of Act XIII of 1859. 4 *B. L. R. App.* 1.

15. The High Court declined to exercise their extraordinary powers of rivision in a case in which the Joint Magistrate dismissed a complaint of breach of contract under Act XIII of 1859 on the ground that that Act did not apply to this contract, which was a contract to work at a certain factory. 18 *W. R.* 53.

16. On the construction of S. 2 Act XIII of 1859: Held, that gold or silver money given to an Artificer as raw material wherewith to make the article contracted for, is an "advance of money" with in the meaning of the section. 6 *M R. App.* 24.

17. Where a contract was made by the defendant that a number of coolies should be brought by him to an estate and remain at work on the estate for a specified time and there had been a breach of the contract. Held that the case is within S. 2 Act XIII. of 1859. 3 *M. R. App.* 25.

18. An order of a Magistrate, passed under S. 2 Act XIII of 1859, "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month" annulled as to the latter part, the Magistrate having no power to make that order until the failure had occurred and been proved before him. 4 *B. R.* 37.

19. Where a laborer contracted with the Manager of a silk factory for a money consideration to work at the factory for four months in a year for a period of three years, and broke the terms of his contract, he was held liable to a prosecution under Act XIII of 1859, and the order of the Magistrate holding that such a contract was an unreasonable one, and therefore one which ought not to be enforced by him, was set aside. 11 *W. R.* 29

20. A labourer agreed to serve in consideration of money due from him on account of previous debts. He served for three months only, and then quitted service in violation of the agreement. He was prosecuted and convicted of breach of contract of service under Act XIII. of 1859.

* See Chapter XXII N. Cr. P. C.

Held that he was not liable to be dealt with criminally, because there was no fraudulent breach of contract within the meaning of Act XIII of 1859, and because, further, *no money in advance was received*, the consideration for the agreement to serve being an old debt. 9 *B. R.* 171.

21. Coolies in Assam who have received advances in contemplation of work to be done, may be proceeded against under Act XIII. of 1859. 8 *W. R.* 6.

22. Held, that a sentence of imprisonment should not be announced beforehand in the order directing performance of the contract, but should follow on a complaint of non-compliance. 6 *M. R. App.* 24.

A. D. 1859—XXIV. (*Police Act*)

23. There is no Act of the Legislature which empowers either the District Magistrate or the Local Government to define a "town" for the purposes of S. 48 Act XXIV of 1859. 6 *M. R. App.* 34.

24. Persons convicted under S. 48 of Act XXV of 1859 are not liable to both fine and imprisonment in default of payment.

The Procedure to be followed in enforcing the fine is that laid down in Madras Act V of 1865. 3 *M. App.* 9.

25. Accused, a Police Constable, was convicted under S. 41 of Act XXIV of 1859 of ceasing to perform the duties of his office.

The evidence showed that he had gone to sleep while posted as a sentry over the Jail. Held, that the accused was not guilty of the particular species of offence of which he was convicted; he was, however, guilty *prima facie* under the section.

Going to sleep while on guard is an offence punishable under section 10. 6 *M. R. App.* 31

A. D. 1860—XXXI. (*Arms Act*)

26. The mere possession of arms in a certain district being an offence, if there be satisfactory evidence that the prisoners were in the possession of arms, they would be punishable for such illegal possession, notwithstanding the police may have also committed an illegality in their procedure in conducting the search for same. 2 *N. W. P. R.* 57.

27. The mere possession of arms without a license in Gya was held to be no offence under the Arms Act XXXI of 1860, the provisions of S. 32 of that Act not having been extended to that District. 18 *W. R.* 26.

A. D. 1861—V. (*Police Act*)

28. Before a Police Officer can be convicted of an offence under S. 29 Act V of 1861, it must be found that he is guilty, not of mere neglect, but of deliberate and intentional violation of duty. 17 *W. R.* 34.

29. A Police Officer negligently or improperly submitting an incorrect report of a local investigation may be punished under S. 29 Act V of 1861 in cases where the proof is insufficient to bring the case under S. 218 of the Penal Code. 15 *W. R.* 17.

30. Mere rashness or negligence on the part of a Police Officer before ordering the search of a man's house for stolen property, does not constitute an offence amounting to violation of duty under S. 29 Act V of 1861. The violation there intended must be wilful, intentional violation of some clear duty or other. 19 *W. R.* 7

31. A Police officer under suspension cannot be convicted under S. 29 Act V of 1861 of withdrawing from the duties of his office without permission. 17 *W. R.* 12.

32. Placing tanbans in a public thoroughfare is an offence under S. 34 of Act V of 1861. But Sub-Magistrate not competent of his own motion to institute the prosecution. 2 *N. W. P. R.* 5.

A. D. 1862—V. *Act.*

33. Where an accused was charged before the Sessions Judge under both S. 409 P. C. and under the Special Law S. 29 Act V of 1862 and was acquitted under the former section, it was held that the Sessions Judge could not convict under the latter law, as the Magistrate alone has jurisdiction to convict under that law. 9 *W. R.* 36.

A. D. 1862—X. * (*Stamp Act*)

34. The words in S. 3 of Act X of 1862 "unless in any case in which a higher penalty is imposed" and "not exceeding" apply both to the penalty of Rs. 100 and to one higher than ten times the value of the omitted stamp.

Attesting witnesses and persons who draft documents and note the fact with their signatures at the foot do not come within the words "make, execute, sign, or be a party to" used in the section, and are therefore not punishable under it. 3 *M. R. App.* 27.

35. A prosecution under S. 3 Act X of 1862, not having been authorized by the Collector of the Stamp Revenue of the district, or any other officer specially authorized by the Government in that behalf, is, under S. 52 of that Act, altogether irregular. 2 *N. W. P. R.* 188.

36. Held that the mere engrossing of a deed on unstamped paper does not constitute an offence under S. 3 Act X of 1862, nor does the signing such a deed as a witness. 1 *B. R.* 37; 2 *B. R.* 129.

A. D. 1862—XVIII. (*Railway Act*)

37. The drunkenness of a guard or under-guard in charge of a railway-train or any part thereof is an offence included in S. 35 of Act XVIII of 1862; but the High Court has no jurisdiction to try a prisoner charged with such offence where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras. 1 *M. R.* 193.

A. D. 1865—V. *Act.*

38. A Hindoo priest was charged with knowingly and wilfully solemnizing a marriage between persons one of whom professed the Christian religion, the said priest not being duly authorized under S. 6 Act V of 1865, an offence punishable under S. 56 of the same Act. The Session Judge discharged the accused without trial on the ground that the enactment in question was inapplicable to the celebration of a marriage according to the Hindoo form by a Hindoo priest, though one of the contracting parties was a Christian convert. Held, that this view of the law was erroneous and that the accused was *prima facie* liable under S. 56 of the Act. 6 *M. R. App.* 20

A. D. 1865—XX. (*Mooktears' Act*)

39. The mere writing of a petition for a party who afterwards presents that petition himself is not "acting" as a Mooktear in a Criminal Court within the meaning of S. 11 Act XX of 1865. 17 *W. R.* 27.

Repealed by Act XVIII of 1869.

40. Where a Magistrate suspended a Mooktear for three months for making a wilful false statement, it was held that the Magistrate had no power to suspend the Mooktear under Act XX of 1865, and his suspension was set aside. 17 *W. R.* 6.

A. D. 1866— XIV. (*Indian Post office Act*)

41. Act XIV of 1866 does not provide for the punishment of abetting an offence under that Act. 7 *W. R.* 54.

42. *Per Kemp. J.* (*Glover, J. doubting*) That the opening of a newspaper by a person employed in the Post Office and replacing it in its envelope, does not constitute an offence under S. 48 Act XIV of 1866, as it could not be said that the accused stole, fraudulently appropriated, wilfully secreted, destroyed, or threw away any letter or other article sent by post.

Per Kemp & Glover. J. J.—There must be a fraudulent intention in the act of the accused before he can be convicted under S. 48. 19 *W. R.* 4.

43. The accused being entrusted to put a proper amount of stamps on a letter and return such as might not be required, did not return them but mis-appropriated stamps to the value of two annas, and was convicted and punished under S. 49 of Act XIV of 1866 instead of under the Penal Code for criminal breach of trust. As the accused had not been sentenced to a larger amount of punishment than could have been awarded for criminal breach of trust, nor shown to have been prejudiced by the error of convicting him under the Post Office Act, the High Court could not, under S. 426 * O. Cr. P. C. reverse or alter the sentence, pointing out at the same time that this was one of those cases in which it was a mistake to look at the smallness of the amount mis-appropriated rather than to the gravity of the offence. 17 *W. R.* 50.

A. D. 1866—XX. † (*Registration Act*)

44. Where A intended to register a deed but was too ill to do so, and B who was known to A, personated A and had the deed registered in her name, it was held that in the absence of any thing to prove that it was intended to defraud any body, A was not guilty of cheating by personation under S. 419 P. C. but of an offence under S. 93 of Act XX of 1866. C and D, who abetted A, were convicted of an offence under S. 94 of the said Act. 11 *W. R.* 24; 2 *B. L. R. A. J.* 25.

45. Three persons who put up a fourth to personate one whose authority was required to complete a conveyance of immovable property, were held guilty under S. 94 of the Registration Act XX of 1866. 7 *W. R.* 99.

46. Under S. 94 Act XX of 1866, an abettor may be punished more severely than his principal can be. 8 *W. R.* 16

47. The proceedings of a Magistrate who tries prisoners charged with having committed offences under S. S. 93 and 95 of the Registration Act XX of 1866, are not illegal and without jurisdiction or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he was subordinate) instituted against the accused by the same Magistrate in his official capacity of Sub-Registrar. 17 *W. R.* 39.

A. D. 1867—III. (*Gambling Act*)

48. The gist of the offence under S. 4. of Act III. of 1867, consists in the fact that the house in which the gambling takes place is "a common gaming-house."

* See S. 283 N. Cr. P. C. † See Act VIII of 1871.

The gist of the offence under S. 13 is, "the gambling in a public street or place."

Gambling in a private house is not an offence under the Act. 2 *N. W. P. R.* 289.

49. Gaming is not punishable by law unless it be carried on in public places or thoroughfares, or in common gaming-houses. 3 *N. W. P. R.* 1; 134.

50. Common gaming-houses are houses in which instruments of gambling are kept or used for the profit or gain of the owner or occupier, whether by way of charge for the use of the instrument of gaming or of the houses, or otherwise howsoever. 3 *N. W. P. R.* 134.

51. To authorise an entry or search of a house under S. 5 Act III of 1867, there must be credible information before the Magistrate or Police Officer who may take action under such section, that the house is a common gaming-house.

Unless a house is entered or searched *under the provisions of S.* 5, the findings of cards, dice, &c., therein will not be *prima facie* evidence for the purposes mentioned in Act III of 1867. 2 *N. W. P. R.* 476.

52. Lottery tickets by reference to which it is to be directed whether the holder or purchaser wins the whole, or any part, of any stakes, are instruments of gaming within the 1st and 4th sections of Act III of 1867, and they are instruments of gaming of a nature similar to cards. 12 *W. R.* 34.

A. D. 1869—IX. (*Indian Income Tax Act*)

53. The (Act XI of 1869, supplemented by Act XVIII of 1869) having been passed subsequently to the general clauses (Act I of 1868), S. 5 of the latter authorises the award of imprisonment in default of payment of the fine imposed under S. 25 of the former. 7 *B. R. A. J.* 76.

54. There are strong grounds for urging, that the Legislature intended, that convictions under S. 24 and 25 Act IX of 1869 should be summarily disposed of by the Magistrate, but the Court is not prepared to hold that the right of appeal is taken away.

No jurisdiction is given to the Judge to reverse a conviction under these sections, because he may regard it as one of hardship, nor has he to determine whether or not the failure to pay was in pursuance of an intention to avoid payment or not.

By failing to make payment within the time specified in the notice, the taxpayer is guilty of an offence within the terms of S. 25, and subsequent payment does not take the case out of the provisions of that section.

To render such a conviction valid, it must be shown that the prosecution was instituted at the instance of the Collector, and the mere sending on the Tehseeldar's report, with an expression of the Collector's general desire to prosecute defaulters, cannot be held tantamount to the institution of a prosecution at the instance of the Collector.

The provisions of S. 27 seem to imply that the Collector ought in each case to exercise his discretion as to whether a prosecution should be instituted. 2 *N. W. P. R.* 113 & 114.

A. D. 1869—XVIII. (*Stamp Act*)

55. Entries of loans in account-books cannot be treated as bonds within the meaning of cl. 5, S. 3 of Act XVIII of 1869. 2 *N. W. P. R.* 153.

56. Intention to evade payment of stamp duty is not an essential ingredient in the offence described by S. 29 of Act XVIII of 1869. Held, that the donor

under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the section. 6 *M. R. App.* 5.

A. D. 1871—1. (*Cattle Trespass Act*)

57. Where a Magistrate convicted, under S. 27 of Act 1 of 1871, a person who was not himself a pound-keeper, but was merely entertained by the Police Patil, who was *ex-officio* pound-keeper under S. 6 of the Act. The High Court annulled the conviction and sentence passed upon the accused. 9 *B. R.* 164.

A. D. 1871—XXV. (*Railway Act*)

58. The prisoner, a servant of Railway Company, was convicted under S. 29 of Act XXV of 1871, of endangering the lives of the persons in a certain train by negligence. There was no evidence that the safety of any persons in any train had been endangered by his neglect of duty. On the contrary, by reason of precautions taken by other persons, any possible danger which might have resulted from his neglect was avoided. Held, that he could not be convicted and punished under S. 29 of Act XXV of 1871. 5 *N. W. P. R.* 240.

XV. LIFE (OFFENCES AFFECTING)

BIRTH (*concealment of—of child*) *P. C. S.* 318.

1. Upon a prosecution under S. 318 P. C. a person cannot be convicted of concealing the birth of a child in the case of a mere fœtus four months old. 1 *M. R. App.* 63.

CHILD (*exposing and abandoning—under* 12 *years by parent*) *P. C. S.* 317.

2. S. 317 P. C. was intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children not being able to take care of themselves may run the risk of dying or being injured. 16 *W. R.* 12.

3. Held, that where from the circumstances, it appeared that a child who had been exposed by the prisoner did not die in consequence of the exposure, except in a remote decree, the prisoner, though guilty under S. 317 P. C. could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure 10 *W. R.* 52.

CULPABLE HOMICIDE. *P. C. S.* 299.

4. Under S. 299 P. C. an offence may amount only to culpable homicide not murder, although none of the exceptions specified in S. 300 are applicable to the case. 8 *W. R. F. B. R.* 47.

5. In a case of culpable homicide not amounting to murder, it was held that, though the occasion might have been one in which the prisoner was justified in meeting force by force, still, as he inflicted a blow which he must have known was likely to cause death, he had exceeded his right of private defence with reference to cl. 4 S. 99 of the P. C. 6 *W. R.* 89.

6. To take the offence of homicide out of the category of murder by reason of grave and sudden provocation, the act must be done whilst the person doing it is

deprived of self-control by the grave and sudden provocation. 12 *W. R.* 68; 4 *B. L. R. A. J.* 6.

CULPABLE HOMICIDE (*punishment for*) *P. C. S.* 304.

7. Where the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed. 4 *W. R.* 39.

8. The prisoners assaulted a thief so severely that he died. 141 marks of separate blows were found on the body of the deceased and several of his ribs were broken. Held, that S. 304 A of the P. C. was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under S. 304. 5. *N. W. P. R.* 235.

9. Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause death or such bodily injury as was likely to cause death, is punishable under S. 304 P. C. as culpable homicide not amounting to murder. 7 *W. R.* 54.

10. Where a man of full age (*i. e.* above 18 years) submits himself to emasculation performed neither by a skilful hand nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder. 5 *W. R.* 7.

11. Where a lad of 15 years, in the heat of discovery of the deceased in the act of adultery with a near relative's wife, and, without the use of any lethal or other weapon, joined that relative in committing an assault on the deceased who died from the effects thereof. Held, that the offence committed was culpable homicide not amounting to murder. 5 *W. R.* 41, 42.

12. Where a man was murdered by his brother and nephew, while in the act of dishonouring the brother's wife,—Held that there was grave and sudden provocation, within the meaning of Exception 1 S. 300 of the P. C., which would have justified the murder if only such force had been used as was necessary to protect the wife from the outrage to which she was being subjected; but that, as the deceased had been beaten in a cruel and vindictive manner, the prisoners were guilty of culpable homicide not amounting to murder. 6 *W. R.* 42.

13. The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantation. The prisoner armed with a sword and watching from the roof of the house saw his wife being actually violated by the deceased. He jumped down from the roof and struck deceased with his sword in several places, from the effects of which he died: Held that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder. 3 *B L. R. A. J.* 33.

14. The two prisoners having confessed that, having caught the deceased in the fact of having sexual intercourse with the wife of one of them, they then and there killed him. Held that the very grave provocation given to them was such as to reduce their crime from murder to culpable homicide not amounting to murder. 1 *W. R.* 17.

15. Intriguing with a sister is sufficient grave provocation to justify a conviction of culpable homicide not amounting to murder as against the brothers who finding the deceased lying with their sister in the same bed, ill-treated him from the effects of which ill-treatment he died. 4 *W. R.* 38.

16. Held by the majority of the Court that the offence committed was murder

where the death of a weak half-starved old woman who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of such defence ; (*Campbell J. contra*) being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment, inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable homicide not amounting to murder. 5 *W. R. F. B. R.* 33.

17. Where a thief was caught house-breaking by night, with half his body and his head through the wall of a house occupied by none but women except the prisoner and his young idiot son, and where the prisoner suddenly caught up a sort of pole-axe, and with it struck the thief five times on his neck and nearly cut off his head.—Held that the offence committed by the prisoner was not murder inasmuch as it was committed in the exercise of the right of private defence; but that as the prisoner inflicted more hurt than was necessary for the purpose of defence, he was guilty of culpable homicide not amounting to murder. 6 *W. R.* 50.

18. In a case of riot in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder. 7 *W. R.* 103.

19. The prisoner having struck the deceased a hasty though fatal blow with a stick in his hand at the time, of abusing his mother, wos held guilty of culpable homicide not amounting to murder, and not of murder. 1 *W. R.* 23.

20. Where a person snatches up log of heavy wood and strikes another with it on a vital part with so much force and vindictiveness as to cause that other person's death almost on the spot, the fact must be held to have been done with the knowledge that it was likely to cause death, but, if done without premeditation in the head of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder. 7 *M. R.* 106,107.

DEATH (*causing—by rash or negligent Act*) *P. C. S.* 304 *A.*

21. Where there was medical evidence to show that milk had been administered to a child in such quantities as to kill it, but there was no evidence to show that the milk was administered by the orders of the mother, or that she knew the quantity that was being administered. Held that there was not sufficient evidence to bring her within S. 304 A. of the P. C.

The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over-fed, or of the probable consequences of such overfeeding; such feeding was inconsistent with the terms of S. 304 A, which provides for the causing of death by any rash or negligent act, not amounting to murder. What a man does with the knowledge that the consequences will be likely to cause death, cannot be reduced to a simply rash and negligent act. 5 *N. W. P. R.* 38.

MISCARRIAGE, (*causing*) *P. C. S.* 312.

22. The offence defined in S. 312 can only be committed when a woman is in fact pregnant. 15 *W. R.* 4.

MURDER. *P. C. S.* 300.

23. Under the Penal Code, no constructive, but an actual, intention to cause death is required to constitute murder. 5 *W. R.* 42.

24. To enable a person to plead the extenuating circumstances provided for in S. 300 P. C. Exception 1, the provocation and its effects must be sudden as well as grave; and the deprivation of the power of self-control must continue in order to benefit a man who kills another under circumstances of grave provocation. 19 *W. R.* 35.

25. To give an accused the benefit of Exception 1 S. 300 P. C., it ought to be shown distinctly, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action, but that that feeling had an adequate cause. 10 *W. R.* 26; 1 *B. L. R. A. J.* 11.

26. Where a man suddenly cut off his wife's throat, it was held that, in order to establish that the act was not done under grave provocation so as to bring the case under Exception 1 of S. 300 P. C., it is not sufficient to state that the deceased ceased abusing the prisoner then but it is necessary to show what interval elapsed between the time when the deceased ceased to speak, and the instant when the prisoner attacked her. 7 *W. R.* 27.

27. Held with reference to the provisions of S. S 97, 99 and 102 of the P. C. that on the facts of this case, the accused had no reasonable apprehension of danger to himself from the threats of the deceased whom he killed, and that therefore the right of private defence of the body did not arise and the case was not taken out of the category of murder by reason of the 2nd Exception to S. 300 of the P. C. 13 *W. R.* 55.

28. Held that a case in which the accused pursued after a thief, and killed him after the house-trespass had ceased, did not fall within the 2nd Exception to S. 300 of the P. C., the right of private defence of property continuing under cl. 5. S. 105 of that code, only so long as the house-trespass continues. 10 *W. R.* 9.

29. The prisoners, fearful of being punished if they allowed him to escape, and thinking that they were acting lawfully, in furtherance of a plan arranged for them by a Police Constable and the lumberdar of a village for the capture of an outlaw, for whose arrest a reward has been offered, and in pursuance thereof, killed him, while endeavouring to escape. Held, that the offence committed came under the 3rd. Exception in S. 300 of the P. C., and was culpable homicide not amounting to murder. 5 *N. W. P. R.* 131.

30. To bring a case under cl 4 S. 300 of the P. C., it must be proved that the accused, in committing the act charged, knew that it must in all probability be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. When a poisonous drug was administered to a woman to procure mis-carriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death &c., they were acquitted by the High Court of murder and convicted of an offence under S. 314 of the P. C. 10 *W. R.* 59.

31. Intoxication is no excuse for a man throttling to death another and a weaker man who was intoxicated also. The Assessors having brought the case within Exception 4 of S. 300 P. C., without any good evidence or substantial grounds, the Sessions Judge was held to have correctly over-ruled their verdict, and found the prisoner guilty of murder. 5 *W. R.* 58.

32. The accused, who professed to be snake-charmers, persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had power to protect them from harm: Held that the offence would have been murder under S. 300 P. C. if under the circumstances of the case, it did not fall within the 5th Exception to that section.

Held also, that the consent given by the deceased allowing themselves to be bitten did not protect the accused, such consent having been founded on a misconception of facts, that is, in the belief that the accused had power by charms to cure snake-bites, and the accused knowing that the consent was given in consequence of such misconception (S. 90 P. C.) 12 *W. R.* 8.

33. An unpremeditated assault (ending in an affray in which death is caused) committed in the heat of passion upon a sudden quarrel (it being immaterial which party offered the provocation or committed the first assault) was held to come within Exception 4 of S. 300 of Penal Code, 1 *W. R.* 33.

34. The absence of premeditation will not reduce the crime from murder to culpable homicide not amounting to murder. 3 *W. R.* 40.

35. Culpable homicide is not murder unless the case comes expressly within the provisions of clauses 1, 2, 3 or 4, of S. 300 of the P. C. 8 *W. R. F. B. R.* 47.

36. The offences of murder and of culpable homicide not amounting to murder, each suppose an intention or knowledge of likelihood of the causing death. In the absence of such intention or knowledge, the offence committed may be the offence of causing grievous hurt. 1 *W. R.* 23.

37. Held by the majority (*Campbell J. dissenting*) that, if a man strikes another on the head with a stick when he is asleep, and fractures his skull, knowledge of likelihood of causing death must be presumed; and that, if none of the exceptions under S. 300 P. C. are pleaded or probable, the offence committed is murder. 4 *W. R. F. B. R.* 35.

38. Where a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon with the knowledge that the act was such as was likely to cause death, the conviction should be for murder, and not culpable homicide not amounting to murder. 5 *W. R.* 32.

39. The Judge having convicted the prisoners of culpable homicide not amounting to murder after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding, and a new trial ordered. 3 *W. R.* 38; 4 *W. R.* 32.

40. Held by the majority that, when four men beat another at intervals and so severely that death ensues from the injuries received, they must be presumed to have known that by such acts they were likely to cause death; that, moreover, when these acts were done when there was no grave or sudden provocation, or no sudden fight or quarrel, the offence which they have committed is murder; and that the offence of murder is not reduced to culpable homicide not amounting to murder, by the absence of intention to cause death. 4 *W. R. F. B. R.* 33.

41. Where a number of persons members of an unlawful assembly went to abduct A and one of them killed B, in the attempt to abduct A: Held that all the persons concerned in the attempt at abduction were guilty, looking to S. 149 P. C. of causing the death of B. 13 *W. R.* 33; 4 *B. L. R. App.* 47.

42. Held by the majority that, where two members of an unlawful assembly use spears and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to

cause death, all the members of the unlawful assembly or jointly guilty of murder. 4 *W. R. F. B. R.* 26.

43. Proof of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is cooly and barbarously put to death. 7 *W. R.* 60.

44. A person who beats another brutally and continuously so that the back of the victim is reduced to a state of pulp, and yet studiously avoids breaking a bone (the very fact of his taking such a precaution evincing deliberation) is guilty of murder or culpable homicide not amounting to murder, according as there may or may not have been grave provocation. 5 *W. R.* 78.

45. Held by the majority of the Court (*Campbell J. dissenting*) that when a person wilfully killed another whilst endeavouring to escape after having been detected in the act of house-breaking by night for the purpose of theft, the offence committed was murder, and could not be considered to have been committed in the exercise of the right of private defence either of person or property, nor under grave and sudden provocation. 5 *W. R. F. B. R.* 73.

46. A is guilty of murder if he several times kicks B, who, after having been severely beaten, has fallen down senseless ; as A must have known that such kicks were likely to cause death in B's state at that time. 3 *W. R.* 22.

47. Where an accused killed A, whom he had no intention of killing by a blow with a highly lethal weapon like a sharp *das* intended to kill B , he was held guilty of the murder of A. 8 *W. R.* 78.

48. Where it appeared that the prisoner, a Rajput, had allowed his female child, after the mother's death, to gradually languish away and die from want of proper sustenance, and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it, and there was nothing to show that the prisoner was not in a position to support the child. Held, that the offence which the prisoner committed was murder, and not simply culpable homicide not amounting to murder. 5 *N. W. P. R.* 44.

49. Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent. 6 *W. R.* 83.

50. Two parties met each other in a drunken state and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck to other a violent blow on the left temple as the latter was raising, or had just risen, from the ground, causing instant death. Held that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of clauses 2 and 3 S. 300 of the Penal Code. 8 *W. R.* 71.

MURDER BY CONSENT.

51. In a case of murder by consent : Held that evidence of consent which would be sufficient in a civil transaction must be equally sufficient in exculpation of a prisoner's guilt. 6 *W. R.* 57.

MURDER (*punishment for—by a life-convict*) *P. C. S.* 303.

52. Where a person under sentence of transportation for life on a conviction

for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to S. 303 Penal Code is that of death. The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge differing in that point from the jury referred the case to the High Court under S. 263 of N. Cr. P. C. Held, that in a case of this kind, the High Court will not interfere without the very clearest proof that the jury were mistaken, and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by S. 263 N. Cr. P. C.

On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to. 19 *W. R.* 45.

XVI. MARRIAGE (OFFENCES RELATING TO)

ADULTERY. *P. C. S.* 497.

1. A person convicted of adultery under S. 497 P. C., need not be convicted also under S. 498; far less where there is no taking or enticing away of the woman. 2 *W. R.* 35.

2. Where a prisoner accused of adultery sets up in defence a Natra, contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is, whether or not the accused honestly believed, at the time of contracting the Natra that the woman was the wife of another man. 5 *B. R.* 17.

3. Held, that a custom of the Talapda Koli caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (natra) with another man during the lifetime of her first husband and without his consent, was invalid, as being entirely opposed to the spirit of the Hindoo law; and that such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable, as regards the woman, under S. 494 P. C.; and that the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery, under S. 497. 2 *B. R.* 117.

BIGAMY.

4. A Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professing Christian. 3 *M. R. App.* 7.

RE-MARRIAGE (*during the life time of husband or wife*) *P. C. S.* 494.

5. The *Nikha* form of marriage is well known and established among Mahamadans. The issue of a *Nikha* marriage would be legitimate under the Mahamadan Law. 18 *W. R.* 28.

6. A *Nikha* marriage falls within the perview of S. S. 494 and 495 of the Penal Code. 6 *W. R.* 60.

7. Where a woman was convicted of marrying a second time during her first husband's lifetime, the High Court, while thinking it not necessary to reduce the punishment passed by the Sessions Judge, observed that, taking the circumstances

of the case into consideration, the extreme youth of the accused, and the influence she was no doubt subjected to, a nominal punishment would have sufficed. 18 *W. R.* 9.

RE-MARRIAGE (*during the life time of husband with concealment of the former marriage*) *P. C. S.* 495.

8. Held by the Majority of the Court that a woman, who does not use on reasonable means in her power to inform herself of the fact of her first husband's alleged demise, and contracts a second marriage within sixteen months after co-habitation with her first husband, without disclosing the fact of the former marriage to her second husband, is liable to enhanced punishment under S. 495, P. C. 4 *W. R.* 25.

WOMAN, MARRIED (*enticing or taking away a—with intent &c.*) *P. C. S.* 498

9. In a charge under S. 498 P. C., the words of the section "conceals or detains" must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments. 4 *M. R.* 20.

10. Upon an indictment under S. 498 P. C. charging that the prisoner took away one A, who was then and whom he then knew to be the wife of one M, with the intent that he might have illicit intercourse with the said A. Held that, there was a taking within the meaning of the section although the advances and solicitation had proceeded from the woman and the prisoner had for some time refused to yield to her request. 2 *M. R.* 331.

11. In a charge under S 498 P. C. (of taking away a married woman), marriage must be presumed from the fact of a man and woman living together and from their own evidence (altogether unrebutted) that she is his legally married wife. 17 *W. R.* 5.

12. Enticing or taking away with a criminal intent a wife living in her husband's house or in a house hired by him for her occupation and at his expense during his temporary absence, is punishable under S. 498 P. C., provided the seducer knew, or had reason to know, that she was the wife of the man from whose house he took her. 5 *W. R.* 50.

XVII. PROPERTY (OFFENCES AGAINST)

BREACH OF TRUST, (*Criminal*) *P. C. S.* 405.

1. To constitute the offence of criminal breach of trust, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. 16 *W. R.* 39.

2. A refusal to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under S. 405 P. C. 2 *B. R.* 127.

3. A Constable who dishonestly misappropriates to his own use the pay of his Thanna Police entrusted to him, is guilty of criminal breach of trust. 3 *W. R.* 44.

4. The subsequent making away with property by a person originally in lawful possession of the same, is not theft but criminal breach of trust. 1 *W. R.* 2.

5. The accused was convicted of criminal breach of trust in respect of the value of goods which had been entrusted to him to sell. It was urged before the High Court that the conviction could not be sustained, as the accused was a partner with the prosecutor: Held by *Jackson J.* that the finding of the Magistrate and Session Judge on the evidence was to the effect that the prisoner was not a partner but a servant; that such finding could not be interfered with by the High Court as a Court of Revision, unless there was a mistake in law, that the finding was correct in law; that the defence of the prisoner, could not be taken to mean to say that he was a partner, but merely that he claimed a small share in the profits; and that such claim did not make him a partner, an agent's remuneration being a share in the profits not constituting the agent a partner.

Held by *Kemp and Mitter J. J.* (releasing the prisoner) that though the allowance of a portion of the profits or goods does not destory the relation of master and servant the accused in this case distinctly pleaded he was a partner and not only that he was entitled to a share in the profits; that the lower courts did not specially decide that the accused was a servant; and that the prosecutor's remedy was a civil suit for an account. 9 *W. R. F. B. R.* 37.

BREACH OF TRUST, CRIMINAL (*by clerk or servant*) *P. C. S.* 408.

6. A servant who receives money for a specific purpose, and does not use it for that purpose, and on being called on to account for the money falsely says that he used it, for that purpose is guilty of criminal breach of trust under S. 408 P. C. 10 *W. R.* 28.

7. Where a Court Inspector improperly delegated to a Constable the custody &c. of Government monies (taking from him private security to save himself from loss in case of defalcation), and the Constable dishonestly converted the money to his own use although he afterwards restored it, the case was held to fall under S. 408, and not S. 409 of the P. C., and the sentence reduced from 10 years' transportation and a fine of 500 Rs. to one year's rigorous imprisonment without fine. 8 *W. R.* 1.

BREACH OF TRUST, CRIMINAL (*by public servant*) *P. C. S.* 409.

8. S. 409 P. C. does not limit the mode in which a trust arises, whether by specific order or by reason of its being part of the proper duty of a public functionary. Where therefore it was proved that the Head Clerk of an office entrusted the management of stamps with the knowledge and sanction of his superiors to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant, within the meaning of S. 409, when he made away with the stamps. 13 *W. R.* 77.

9. A village shroff whose duty it was to assist in collecting the public revenue received grain from ryots and gave receipts as if for money received by virtue of a private arrangement. Held that he could not be convicted of criminal breach of trust by a public servant under S. 409 P. C., as he was not authorised to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue. 4 *M. R. App.* 33.

10. A Nazir is the head of an important department, and must be responsible for the truth of what he reports or admits. He cannot be permitted to avoid responsibility by urging that his mohurrir deceived him. 7 *W. R.* 109.

11. The Naib Nazir is a public servant within the meaning of S. 409 P. C., and not the mere private servant of the Nazir. 2 *N. W. P. R.* 298.

12. The mere fact of there being a large deficit of salt, without distinct proof

of a criminal misappropriation, is not sufficient to convict the salt Darogah in charge of the Golahs of criminal breach of trust under S. 409 P. C. 5 *W. R.* 21.

CHEATING, *P. C. S.* 415.

13. To justify a conviction for the offence of cheating there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made. 9 *B. R.* 448.

14. The mere taking money one day and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention. 5 *W. R.* 5.

15. A person hiring certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire, and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending when he got the property to apply for its attachment in a civil suit in respect of an alleged claim, is guilty of cheating. 3 *N. W. P. R.* 16.

16. Case of cheating a person who was induced to part with his money and to contract marriage under the false impression that the girl he was marrying was a Brahminee. 5 *W. R.* 98.

17. The defendant was convicted of cheating. He applied to the Tahasildar for a specified quantity of land on cowle tenure free of tax for five years, and falsely represented that the land was waste land. Held, a good conviction. 6 *M. R. App.* 12.

18. Where the accused were convicted of cheating under S. 415 P. C. the one of selling watered milk and the other an inferior sort of sweetmeats,—they were acquitted: the former, because the purchaser knew, and was told the milk was watered, and so there was no deception; and the latter on the ground that the purchaser might have tasted the sweetmeats before buying, and the sweetmeats were not composed of any material injurious to health. 18 *W. R.* 61.

19. Where the accused secretly entered an Exhibition building without having purchased a ticket, and was there apprehended: Held that such act did not amount to the offence of cheating, under S. 415 P. C. 6 *B. R.* 6.

20. The prisoners received a Government promissory note, promising to return certain jewels pledged to them, but not intending to do so, and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender. Held that they were guilty of cheating. 3 *N. W. P. R.* 17.

CHEATING (*and thereby inducing delivery of property*) *P. C. S.* 420.

21. An indictment for cheating, under S.S. 415 and 420 P.C., should state that the property obtained was the property of the person defrauded. But an indictment defective in this respect is defective for uncertainty and must be objected to, if at all, before the jury is sworn. 1 *M. R.* 31.

CHEATING (*by personation*) *P. C. S.* 416.

22. The prisoner, having passed himself off as a Police officer, and cheated several villagers out of money, was held guilty of cheating and falsely personating a public servant. 2 *W. R.* 29.

23. Where two girls were brought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of a much higher caste than they

really were, and married to two Rajpoots, after receiving the usual bonus :—Held, that the prisoners could not be convicted under S. 373 P. C., but of cheating and false personation under S. S. 415 and 416. 7 *W. R.* 55.

24. Where a person represented a girl to be the daughter of one woman when she was within his knowledge the daughter of another woman,—Held that he was guilty of cheating by personation under S. 416 P. C., and that it was unnecessary to bring in S. 109 relating to abetment. 7 *W. R.* 51.

25. Where the accused represented to the prosecutor that a girl was a Bramin and thereby induced him to part with his money on consideration of the marriage of the girl to his brother, when the girl really was of the Sudra caste, it was held that he was guilty of cheating by false personation under S. 416 P. C. 16 *W. R.* 43.

CHEATING (*punishment for*) *P. C. S.* 417.

26. A chowkeedar who obtains money from another, either by fraudulent inducement or dishonestly, or by putting that person in fear of injury, is punishable under S. 417 P. C. (Cheating) or S. S. 383 and 384 (Extortion) but not for criminal misappropriation of public money entrusted to him as a public servant. 3 *W. R.* 32.

CRIMINAL TRESPASS, *P. C. S.* 441.

27. In the definition of criminal trespass, the entry and the intention with which a party enters are the essentials. Thus, where A and B all along asserted their prescriptive right to fish in a lake free of rent, and C had failed to establish the relationship of landlord and tenant in a suit brought by him under Act X. of 1859 to get rent from them : Held that no conviction for criminal trespass could be had against A and B, and that C's remedy was by suit in the Civil Court either to eject them if he treated them as trespassers, or to have them declared liable to pay him rent for the future. 18 *W. R.* 25 , 9 *B. L. R. App.* 19.

28. Where the trespass (if any) was not committed with the intent to commit an offence, or intimidate, insult, or annoy the persons in possession, but in the *bona fide* assertion of a claim of title, this does not amount to criminal trespass. 2 *W. P. R.* 82.

29. It is essential to a conviction for criminal trespass under S. 441 P. C. that there should be the intent to commit an offence, or to intimidate, insult, or annoy any person. 14 *W. R.* 25.

30. In order to convict of criminal trespass under S. 441 P. C., it must be proved that the property was in the possession of the prosecutor, and that the entry was made with intent to "commit an offence or to intimidate, insult, or annoy any person in possession of the property. 9 *W. R.* 1.

31. Semble—Criminal trespass is a part of the offence of mischief committed upon land, as well as of house breaking by night. 8 *W. R.* 54.

32. The entry by one man on another's property accompanied by the cutting down of trees in that property is criminal trespass. 1 *W. R.* 46.

33. Accused was Ejman of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution complainant obtained possession from the alienee. The accused entered on this land. Held, that he had not committed the offence of criminal trespass. 6 *M. R. App.* 19.

34. Defendant was convicted of criminal trespass for including in his own land a portion of a public foot-path: Held, that as the public generally were entitled to the use of the foot-path, there was no illegal entry by the defendant on property

in the possession of another with intent to annoy the person in possession, and consequently, that the defendant was wrongly convicted. 6 *M. R. App.* 26.

35. A person who forcibly enters upon property in the possession of another and erects a building thereon ; or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of S. 441 P. C., without reference to the question in whom the title to the land may ultimately be found. 7 *W. R.* 28.

36. Defendant was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial ground. Held, that the conviction was right. The person (corporate) in possession of the burial ground is the portion of the public entitled to use the burial ground and the act of ploughing up the burial ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use. 6 *M. R. App.* 25.

37. Held *by Jackson J.* (setting aside the order of the Magistrate, (*Markby J. dissenting*), that a Magistrate ought not to decline to go into a case of criminal trespass under S. 441 P. C., because the complainant did not make out his title to the land :—the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right. 11 *W. R.* 11.

38. One member of a joint family commits no trespass by entering the house which forms the joint property, but he is guilty of that offence when he enters the room ordinarily occupied by another member of the family. 15 *W. R.* 6.

39. The entry of a stranger into a family dwelling-house, with the permission and license of one of the members, is not criminal trespass. 6 *B. L. R. App.* 80.

40. Where the accused secretly entered an Exhibition building without having purchased a ticket, and was there apprehended : Held, that such entry, when unaccompanied by any of the intents specified in S. 441 P. C., does not amount to criminal trespass or any other criminal offence. 6 *B. R.* 6.

CRIMINAL TRESPASS (*grievous hurt or death caused by one of several persons while committing*) *P. C. S.* 460.

41. A prisoner who, in the commission of lurking house trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under S. 460, and not under S. S. 457 and 324. P. C. 2 *W. R.* 52.

CRIMINAL TRESPASS (*punishment for*) *P. C. S.* 447.

42. The defendant was convicted under S. 447 P. C. for cultivating village waste land which he had been ordered by the Subordinate Collector to refrain from cultivating. The High Court upheld the conviction. 5 *M. R. App.* 17.

DACOITY, *P. C. S.* 391.

43. The definition of Dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law. 3 *W. R.* 60.

44. When persons are found, within six hours of the commission of a dacoity, with portions of the plundered property in their possession, the presumption of law is that they are participator in the dacoity, and not merely receivers 3. *W. R.* 10.

DACOITY (*assembling for purpose of committing*) *P. C. S.* 402.

45. Case of an unlawful assembly the members of which were held guilty of

an offence under S. 402 P. C. on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity and had no other means of living. 7 *W. R.* 97.

DACOITY (*punishment for*) *P. C. S.* 395.

46. S. 511 P. C. does not apply in a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under S. 397, and a sentence of 3 years' rigorous imprisonment was passed on him, the finding was amended by striking out "S.S. 397 and 511" and substituting " S. 395 ". 7 *W. R.* 48.

47. When a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance, does not take that offence out of the purview of S. 395 P. C. It is sufficient for the application of the section that the robbers cause or attempt to cause the fear of instant hurt or of instant wrongful restraint. 7 *W. R.* 35.

EXTORTION, *P. C. S.* 383.

48. To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury to that person and thereby dishonestly inducing him to part with his property. 4 *W. R.* 5.

49. Held that it is not necessary in a case of extortion, under the Indian Penal Code, that the threat should be used, and the property received, by one and the same individual; nor that the receiver should be charged with abetment, although that might be done. 2 *B. R.* 394.

50. The terror of a criminal charge is a fear of injury within the meaning of those words in S. 383 P. C. Extortion may be equally committed whether the charge threatened is true or false. 7 *W. R.* 28.

51. A conviction of extortion by a F. P. Magistrate, and an order of a Session Judge rejecting an appeal therein, reversed by the High Court: as there was no such fear of injury as is contemplated by S. 383 P. C.; nor was the delivery of money by the complainants thereby induced; nor did it appear from the evidence that the money was obtained dishonestly by the prisoner, who might have demanded it, believing in good faith that he was entitled to it. 3 *B. R.* 45.

EXTORTION (*punishment for*) *P. C. S.* 384.

52. The making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of S. 384 P. C. 18 *W. R.* 17.

HOUSE-BREAKING, *P. C. S.* 445.

53. Effecting an entrance into a house at night by scabing a wall, constitutes house-breaking by night under S. 445 P. C. 2 *W. R.* 65.

HOUSE-TRESPASS (*lurking*) *P. C. S.* 443.

54. When the door of a shop was found broken open,—Held that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night. 4 *W. R.* 19.

55. The accused were convicted of criminal trespass under S. 443 P. C., for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. Held, that there was nothing to show that the Municipal

Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable. 5 *M. R. App.* 38.

HOUSE-TRESPASS (*with preparation for causing hurt &c*) *P. C. S.* 452.

56. Where A goes with a forged warrant of arrest into a house and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass by putting such person in fear of wrongful restraint under S. 452 P. C. 12 *W. R* 33.

MIS-APPROPRIATION (*of property*) *P. C. S.* 403.

57. To bring a prisoner within S. 403 P. C., there must be actual conversion of the thing appropriated to the prisoner's own use. Where, therefore, the accused found a thing and merely retained it in his possession, he was acquitted of criminal mis-appropriation under the section referred to. 10 *W. R.* 25.

58. Where money is paid to a person by mistake, and such person, either at the time of the receipt of the money, or at any time subsequently before its refund, discovers the mistake and determines to appropriate the money, he is guilty of criminal mis-appropriation, but he is not guilty of cheating. 2 *N. W. P. R.* 475.

59. In a case in which the accused is charged with having dishonestly appropriated property under S. 403 P C, the charge should specify the person to whom the property belonged. Where the accused is interested in the property, jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it and disposes of it. 14 *W. R.* 13.

60. It was considered to be a matter of trade between the prosecutrix and the prisoner who took certain hides from the former but refused to pay for them, and was held not guilty of dishonest mis-appropriation under S. 403 P. C. 17 *W. R.* 11.

61. The mis-appropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate enquiry. The duty of a Committing Officer in such a case is to select certain distinct items to frame his charges upon them, and to adduce evidence specially upon those items. 15 *W. R.* 5

62. A servant who retains in his hands money which he was authorised to collect, and which he did collect, from the debtor of his master, because money is due to him as wages, is guilty of criminal mis-appropriation. 11 *W. R.* 51.

63. If it be the duty of the agent of a landholder to keep the collections he makes for his master separate from his own monies, expending there out monies on his master's behalf, and handing over the balance to his master, and if he, in breach of this trust, converts the money to his own use, he is amenable to a criminal prosecution.

And where a landowner permits the agent to mix the collections with his own monies, if the agent applies the money so collected to his own use fraudulently and dishonestly, and falsifies the account so as to conceal his fraud, there is evidence of a criminal mis-appropriation. 3 *N. W. P. R.* 30.

64. The mere fact that the prosecutor gave the prisoner time to make out his accounts and pay the balance due, does not vitiate a conviction for dishonest mis-appropriation, or shew that the matter is one for the Civil Courts only. 5 *W. R.* 56.

MIS-APPROPRIATION (*of property of a deceased person*) *P. C. S.* 404.

65. Held, that S. 404 P. C. (relating to the mis-appropriation or conversion of "property" left by a deceased person) does not apply to immovable property. 6 *B. R.* 33.

66. Held, that under the S. 404 all the elements are required to constitute the offence which would be required to constitute the offence of criminal mis-appropriation in respect of a person who is alive. 12 *W. R.* 39.

67. Held, that it is not necessary for a conviction for dishonest mis-appropriation of property possessed by a deceased person at the time of his death, under S. 404 P. C. that the accused should mis-appropriate to his own use. 12 *W. R.* 39.

68. A person may commit the offence of dishonest mis-appropriation of property possessed by a deceased person at the time of his death (S. 404 P. C.) by dishonestly mis-appropriating the money entrusted to him, although he does not bring such money to his own use. 11 *W. R.* 1.

MISCHIEF, *P. C. S.* 425.

69. To constitute the offence of mischief according to the Penal Code the act done must be shown to have caused destruction of some property or such a change in the property or the situation of it as destroys or diminishes its value or utility or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief. 4 *M. R. App.* 16.

70. Without evidence that the accused intended or knew that he was likely to cause wrongful loss or damage to the complainant, the offence of mischief under S. 425 P. C. was held not made out. 12 *W. R.* 1; 16 *W. R.* 62; 3 *B. L. R. A. J.* 17.

71. To render a person liable under S. 425 P. C. for mischief in consequence of damage done by cattle trespass, he must in some way have caused the cattle to enter the prosecutor's fields, knowing that by so doing he is likely to cause damage. Mere neglegt to keep the cattle from straying is not sufficient. 14 *W. R.* 31; 6 *B. L. R. App.* 3.

72. The mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief. 6 *M. R. App.* 37.

73. A conviction for mischief was quashed in a case where it appeared that the complainant had formerly destroyed a crop belonging to the accused, and the latter, instead of complaining at once, merely bided his time and then took the complainant's crop. 18 *W. R.* 10.

74. The accused were convicted of mischief. The facts were that whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge. Held, that the conviction was bad. 5 *M. R. App.* 40.

75. S. 425 P. C. supposes that the destruction was caused with the intention to cause wrongful loss or damage and does not apply to cases of mere carelessness; and S. 17 Act III * of 1857 supposes the mischief (cattle trespass) was done intentionally and not by negligence. 10 *W. R.* 29.

76. The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of S. 425 P. C. 6 *W. R.* 57.

MISCHIEF (*committing—and thereby causing damage to the amount of* 50 *Rs.*) *P. C. S.* 427.

77. The defendants were convicted of mischief under S. 427 P. C. for grazing his cattle upon waste lands without payment of certain capitation fees to which the prosecutor was entitled:—Held, that there was no evidence that the defendants

* Repealed by Act I of 1871.

caused mischief. The only injury alleged is the non-payment of fees. This was clearly a matter for a civil action. 5 *M. R. App.* 30.

MORTGAGING PROPERTY (*previously mortgaged*)

78. Reg. XIV of 1827, S. 1, cl. 1, Art 7,* and the Religious Law of Hindu's, are not applicable to the case of a party charged with mortgaging his house a second time previously to redeeming the same from a prior mortgagee. 1 *B. R.* 93.

79. A person who pledges what is pledged to him may be guilty of criminal breach of trust. There are two elements,—(1) the disposal of violation of any direction of law or contracts, express or implied, prescribing the mode in which the trust ought to be discharged,—(2) such disposal dishonestly. 6 *M. R. App.* 28.

ROBBERY, *P. C. S.* 390.

80. Theft with violence is robbery. 2 *W. R.* 49.

81. Held that the offence was robbery where, in committing theft, there was indubitably an intention, seconded by an attempt, to cause hurt. 5 *W. R.* 95.

82. By the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment. 6. *W. R.* 85.

83. Where a person through fear &c., offers no resistence to the carrying off of his property but does not deliver any of the property to those who carry it off, the offence committed is robbery and not extortion. 5 *W. R.* 19.

84. The accused was convicted of robberry, but the Magistrate found that the property taken was not taken with any dishonest intention. Held, that the conviction was bad. 5 *M. R. App.* 39.

ROBBERY OR DACOITY (*with use of deadly weapons &c.*) *P. C. S.* 397.

85. A conviction under S. 397 P. C. is equally good, whether the number of thieves be five or under. 2 *W. R.* 49.

STOLEN PROPERTY (*assisting in concealment of*) *P. C. S.* 414.

86. Where persons are charged with assisting in concealing or disposing of property, which they know or have reason to believe to be stolen, the nature of the property, as well as the circumstances under which it was being made away with, must be taken into consideration. 2 *B. R.* 130.

STOLEN PROPERTY (*dishonestly receiving*) *P. C. S.* 411.

87. The offence of dishonest retention of stolen property under S. 411 of the Penal Code may be complete without any guilty knowledge at the time of receipt. 4 *M. R. App.* 42.

88. In a case in which the accused is charged with receiving stolen property it must be clearly proved that he retained the property with guilty knowledge. 13 *W. R.* 70.

89. There being no evidence on the record to show that property, for the dishonestly receiving of which a prisoner had been convicted under S. 411 P. C., was actually stolen, the conviction and sentence under such section will be annulled. 2 *N. W. P. R.* 187.

90. Where a person was charged under S. 411 P. C. with having received stolen property (rubber, the produce of the Government forests at Cachar), and

* Repealed by Act XVII of 1862.

it was not proved that the rubber came from the Government forests or that it was stolen property, and that the prisoner knew that it was stolen property, it was held that the conviction under S. 411 was bad, and that he could not be convicted of smuggling,—smuggling Indian rubber not being an offence under the Penal Code. 18 *W. R.* 63; 19 *W. R.* 37.

STOLEN IN DACOITY, PROPERTY (*receiving*) *P. C. S.* 412.

91. In order to sustain a conviction under S. 412 P. C. of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew or had reason to believe that dacoity had been committed or that the persons from whom he acquired the property were dacoits. 7 *W. R.* 109.

92. It must be proved that the prisoner received or retained plundered property knowing it to be plundered property, before he can be convicted under S. 412 of the Penal Code. 9 *W. R.* 16.

THEFT, *P. C. S.* 378.

93. A conviction for theft under the Penal Code is illegal if the owner has given up all property in and all possession of the subject of the alleged theft 4 *M. R. App.* 30.

94. In a charge for stealing, it must be proved that at the time of the act being done the property stolen was in the possession of the prosecutor. 20 *W. R.* 80.

95. The moving by the same act which effects the severence may constitute a theft. 5 *M. R. App.* 36.

96. A boat may be the subject of theft. Although under S. 442 P. C. it is for certain purposes classed with houses, it does not cease to be movable property under S. 378. 16 *W. R.* 53.

97. A person acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it. 7 *W. R.* 57.

98. S. 378 P. C. does not include under the offence of theft the case when one joint proprietor takes into his own sole possession, property belonging to himself and his co-proprietors which had previously been in their joint custody. 15 *W. R.* 51.

99. A Hindu woman who removes from the possession of her husband, and without his consent, her stridhan, cannot be convicted of theft, nor can any person who joins her in removing it be convicted of that offence. 8 *B. R. A. J.* 11.

100. A Muhammadan married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband. 6 *B. R. A. J.* 9.

101. Inability to prove prescriptive right to fish within certain limits free from payment of rent, is quite distinct from the want of right of any kind to fish therein, rendering a person so fishing liable to be brought up for the theft of fish taken by him. 16 *W. R.* 68.

102. The prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and there was no evidence of such taking. Held, that the conviction was bad. 5 *M. R. App.* 37.

103. Where the accused caught fish in a portion of a navigable river which was claimed by the prosecutor, it was held that they could not be convicted of theft and that if the right of the prosecutor was infringed he could sue in the Civil Court for damages. 20 *W. R.* 15.

104. The taking fish in that portion of a navigable river over which a right of Julkur exists in another person does not fall within S. 378 Penal Code. 19 *W. R.* 47.

105. Where a Court finds that parties came with a number of armed men and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking, they must, with reference to S. 114 P. C. be considered guilty of the substantive offence under S. 378. 8 *W. R.* 59.

106. Dishonest removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such officer. But removal for one's own use from a creek, of such salt not legally appropriated, constitutes no offence either under the Indian Penal Code or Acts XXXI of 1850 or XXVII of 1837, though under S. 7 of the latter Act, made applicable by S. 8 of the former, the salt removed becomes liable to detention. 10 *B. R.* 74.

THEFT (*in dwelling house &c*) *P. C. S.* 380.

107. Theft by Constables of property from the house they were employed to guard is punishable under S. 380, and not S. 409, Penal Code. 3 *W. R.* 29.

108. A hired boatman does not come within the definition of a clerk or servant under S. 381 P. C. Theft by such a person on board a boat comes under S. 380. 8 *W. R.* 32.

THEFT (*by clerk or servant*) *P. C. S.* 381.

109. The prisoners were charged with having stolen a sum of money shut up in a box and placed in the Police Treasury buildings, over which they, as burkundazes were placed in guard. Held that the charge should have been made under S. 381 P. C. (theft by servant in possession of property) and not under S. 409 (Criminal breach of trust by public servant). 2 *W. R.* 55.

XVIII. PUBLIC HEALTH, SAFETY, CONVENIENCE &c. (OFFENCES AFFECTING)

ANIMAL (*negligence with an*) *P. C. S.* 289.

1. To sustain a charge under S. 289 P. C., there should be evidence not only of negligence but also that such negligence would probably lead to danger to human life or of grievous hurt. 3 *M. R. App.* 33.

2. The High Court refused to interfere with an order passed under S. 289 P. C. by a Magistrate fining the owner of a pony which had been tide negligently, which was running about loose in a crowded bazar, and thereby endangering the lives and limbs of persons,—that section referring not only to savage animals, but to any animal. 19 *W. R.* 1.

FIRE OR COMBUSTIBLE MATTER (*negligence with*) *P. C. S.* 285.

3. Held that the word "injury" (rashly caused by fire &c,) in S. 285 of P. C. includes any harm illegally caused to the property of any other person, and is not confined to injury to the person only. 5 *B. R.* 67.

NUISANCE, PUBLIC. *P. C. S.* 268.

4. A previous sanction to the establishment of a trade does not entitle the proprietors to continue the business after it has become a public nuisance to the neighbourhood.

No one has right to corrupt the air of a particular locality by the exercise of a noxious trade simply because at the commencement of the nuisance no person was in a position to be injured by it; and no prescriptive right can be acquired to maintain, and no length of enjoyment can legalize, a public nuisance involving actual danger to the health of the community. 16 *W. R.* 6.

5. A common gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of S. 268 Penal Code. 7 *B. R. A. J.* 74.

NUISANCE, PUBLIC (*continuance of—after injunction to discontinue*) *P. C. S.* 291.

6. Before a conviction can be had of committing a public nuisance under S. 291, there must be proof that there was a previous conviction of an offence and an injunction by a public servant to desist from continuing such nuisance. 20 *W. R.* 55.

NUISANCE, PUBLIC (*punishment for*) *P. C. S.* 299.

7. In a case of public nuisance under S. 290 P. C., it must be proved that injury, danger, or annoyance have been caused either in regard to the enjoyment of property or the exercise of a public right on the part of a portion of the community or of any particular class of people. 9 *W. R.* 70.

8. The omission of a person to keep his ponies from straying is not a public nuisance punishable under S. 290 Penal Code. 6 *W. R.* 71.

9. A prostitute by visiting a dak-bungalow at the request of a person staying there, but against whom there is no evidence of any impropriety of speech, or gesture, or act, or that she had occasioned annoyance to the public generally, or to any persons who, in the exercise of their public right, were lodging in the bungalow, is not liable to be convicted under S. 290 P. C., as having committed a public nuisance. 2 *N. W. P. R.* 350.

10. The petitioners who filled up a portion of a ditch or drain which formed part of a public way, and which belonged to the public, instead of being convicted of a nuisance punishable under S. 290 P. C., was convicted of criminal trespass. But inasmuch as they had not been sentenced to a heavier punishment than might have been awarded if they had been convicted of a nuisance, the High Court, acting under S. 426 * O. Cr. P. C. declined to interfere. 18 *W. R.* 38.

PERSON (*conveying—for hire in vessel overloaded or unsafe*) *P. C. S.* 282.

11. Boatmen who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under S. 282, and not under S. 336 Penal Code. 1 *B. R.* 137.

12. Certain persons whom the accused, a ferryman, was rowing across a river, were drowned by the sinking of a boat. Held, on the facts of this case, that the accused could not be convicted of culpable homicide not amounting to murder, as there was nothing to show that he acted with the knowledge that he was likely by such act to cause death within the terms of S. 299 P. C. The prisoner was convicted under S. 282 of that code, of negligently conveying persons by water for hire in a vessel overloaded or unsafe. 11 *W. R.* 3.

* See S. 283 N. Cr. P. C.

PUBLIC WAY (*rash driving or riding on*) *P. C. S.* 279.

13. The actual driver, and not the owner of a carriage, is liable under S. 279 P. C. in case of a collision and injury to another arising out of rash driving. 14. *W. R.* 32.

PUBLIC WAY OR NAVIGATION (*obstructing*) *P. C. S.* 283.

14. A person who is called as a witness by the Court cannot be convicted and fined under S. 283 of the Penal Code. 16 *W. R.* 43.

XIX. PUBLIC JUSTICE (OFFENCES AGAINST)

APPREHENSION (*resisting—of another*) *P. C. S.* 225.

1. Where a Police Officer duly appointed under Act V of 1861 was engaged in the discharge of his duty as such Police Officer at a time when an unlawful assembly took place, it was held, that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of S. 225 of the Penal Code. 13 *W. R.* 75.

APPREHENSION (*resisting—of one-self*) *P. C. S.* 224.

2. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation. Held, that he had committed an offence punishable under S. 224 and not under S. 226 of the Penal Code. 4 *M. R.* 152.

COMMITMENT (*for trial or to confinement, wilfully contrary to law*) *P.C.S.* 220.

3. Proof of an unlawful commitment to confinement, will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to satisfy the requirements of S. 220 of the Penal Code. 9 *B. R.* 346.

DECREE (*taking a—for a sum not due*) *P. C. S.* 210.

4. Where a person applies for the execution of a decree which has already been executed, his offence falls, not under S. 209, but S. 210 Penal Code. S. 209 relates to false and fraudulent claims in a Court of Justice and is confined to the Civil Court in which the original suit was brought. 12 *W. R.* 37.

ESCAPE (*negligently suffering—of person in confinement*) *P. C. S.* 223.

5. Convict warders are "public servants" within the meaning of S. 223 of the Penal Code. 7. *W. R.* 99.

EVIDENCE (*of an offence, causing it to disappear*) *P. C. S.* 201.

6. A person cannot be punished under S. 201 P. C., where the act which caused the disappearance of the evidence of the commission of an offence was not done with the intention of screening the offender from legal punishment. It is not sufficient that the disappearance of evidence was likely to have the effect of screening the offender. 5 *N. W. P. R.* 186.

7. S. 201 P. C. refers to prisoners other than the actual criminals who, by their causing evidence to disappear, assist the principals to escape the consequences of

their offences. But the person who commits an offence and afterwards conceals the evidence of it, cannot be punished on both heads of the charge. 7 *W. R.* 52.

8. Prisoner was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. Held, that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under S. 201 of the Penal Code. 6 *W. R.* 180.

9. A conviction on a charge of causing the disappearance of evidence of an offence which amounted to culpable homicide not amounting to murder, may be good, though there be no proof of who committed the culpable homicide. 7 *W. R.* 22.

10. Semble. A person cannot be convicted under S. 201 P. C., of causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act. 8 *B. R. A. J.* 126.

11. A commits no offence, if in exercising the right of private defence of his property against B, whom he finds near a hole in A's house, and on being attacked by B, he strikes a blow at random, and in the dark with a stick in his hand, whereby B is killed, C and D by assisting A in removing the body of B cannot be convicted (under S. 201 P. C.) of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender. 2 *W. R.* 43.

12. Prisoner was charged under S. 201 P. C. for that he knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false: Held, that the proper order of proof on the part of the prosecution in the present case, was to prove, (1) that A. N. was murdered; (2) that the prisoner gave information respecting the offence; (3) that such information was false and known by him to be so; (4) that he then knew of the commission of the murder; and (5) that his intention was to screen the murderer: Held also, that it was essentialt o the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner. 3 *M. R.* 251.

FALSE CHARGE (*with intent to injure*) *P. C. S.* 211.

13. To constitute the offence of preferring a false charge under S. 211 P. C., the charge need not be made before a Magistrate, nor need the charge have been fully heard and dismissed: it is enough it is if not pending at the time of trial. 1 *M. R.* 30

14. A person may in good faith institute a charge which is subsequently found to be false, or he may with intent to cause injury to an enemy institute criminal proceedings against him believing there are good grounds for them, but in neither case has he committed an offence under S. 211 P. C.

To constitute this offence it must be shown that the person instituting criminal proceedings knew, there was no just or lawful ground for such proceedings.

The averment that the accused knew that there were no lawful grounds for the charge instituted is a most material one. 3 *N. W. P. R.* 327.

15. To prefer a complaint to the Police in respect of an offence which they are competent to deal with, and thereby to set the Police in motion, is to institute a criminal proceeding within the meaning of S. 211 of the Penal Code. 5 *W. R.* 32.

16. Where a person is charged with instituting a criminal proceeding with intent to cause injury, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him; not

for the prisoner in the first instance to show that he had just or lawful grounds 8 *W. R.* 87.

17. It is not a sufficient ground for a charge under S. 211 P. C., that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence or a statement which is not or ought not to be sufficient to satisfy a reasonable mind, if in truth he did not know, at the time he made the complaint, that there was no just and lawful ground for making it. 6 *W. R.* 15.

18. If the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in S. 211 of the Penal Code. 4 *N. W. P. R.* 6.

19. S. 211 P. C. applies not only to a private individual but also to a Police Officer who brings a false charge of an offence with intent to injure. 11 *W. R.* 2.

20. Under S. 211 P. C. "instituting a criminal proceeding" may be treated as an offence in itself apart from "falsely charging," a person with having committed an offence. 8 *W. R.* 87.

21. Where a man burns his own house, and charges another with the offence of doing so, he should be convicted and sentenced under S. 211 (and not under S. 195) of the Penal Code. 8 *W. R.* 65.

22. Where a person who is interested in the matter, or has a certain official responsibility, says to a Police Officer, "A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X," and follows up that statement by an application to have X's house searched, he prefers a charge against X. If such charge be false, he may be convicted under S. 211 of the Penal Code. 19 *W. R.* 5.

23. Where a person is charged under S. 211 P. C., with having, with intent to injure, falsely to charged another with an offence, knowing that there is no just and lawful ground for the same, the party accused should be allowed to show the information on which he acted; and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge, are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him 3 *B. R.* 16.

24. S.S.182 and 211 P.C. distinguished. The latter held to apply to a case of false charge in which the accused in the present case had appeared before the Police and charged the now complainant with having caused the death of the accused's child by poisoning. 8. *W. R.* 67.

25. The mere fact of being in a subordinate position will not hold a man harmless for the consequences of false and malicious charges made by him officially. 2 *W.* R. 45.

26. A charge of trespass against persons in possession of land decreed to another, whether notice of the decree has been given to the alleged trespassers or not, is not necessarily "frivolous, vexatious, and false." 3 *W. R.* 32.

27. Where a Deputy Magistrate instituted proceedings against a complainant and his witnesses for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft, but was bound to prove the falsity of the complaint of theft in the presence of the accused. 11 *W. R.* 35.

INFORMATION (*giving false—respecting an offence committed*) *P. C. S.* 203.

28. To justify a conviction for giving false information with respect to an offence under S. 203 P. C., it must be proved, not only that the person charged had reason to believe that an offence had been committed, but that the offence had ac-

tually been committed, and that the accused knew or had reason to believe that the offence had been actually committed. 20. *W. R.* 66.

29. A prisoner's intention is immaterial to his conviction under S. 203 P. C., of having given false information respecting an offence committed. 1 *W. R.* 18.

30. Intentional omission is the gist of the offence of a zamindar omitting to give information regarding an offence. 18 *W. R.* 22.

INFORMATION (*omission to give—where offence committed*) *P. C. S.* 202.

31. *Per Kemp J.*—Before a person can be convicted of an offence under S. 202 P. C., there must be legal evidence, (1) that he has knowledge or reason to believe that some offence has been committed; (2) an intentional omission to give any information respecting that offence; and (3) that he is legally bound to give that information. In this case, the Sessions Judge having found that there was no evidence at all. S. 422* O. Cr. P. C. did not apply, as that section only authorizes an Appellate Court to direct additional evidence to be taken where there is some *prima facie* evidence bearing upon the guilt or innocence of the accused, but not where there is no evidence at all.

Per Glover J.—The Sessions Judge, having found that an offence was committed, and that the accused were bound by law to give information respecting it, but that there was not on the record evidence of their omission to give that information, was competent under S. 422 to order the deficiency to be supplied; the object of that section being the prevention of a guilty person's escape through some careless or ignorant proceedings of a Magistrate, or the vindication of a wrongfully accused person's innocence where the same carelessness or ignorance has omitted to record circumstances essential to the elucidation of truth. 18 *W. R.* 31, 9 *B. L. R. App.* 31.

PERJURY.

32. To establish the offence of giving false evidence direct proof of the falsity of the statement on which the perjury is assigned is essential. But as legitimate evidence for this purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the person charged, although not made on oath. Such a statement when satisfactorily proved is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence and on precisely the same ground. That it is an admission of the accused person inconsistent with his innocence.

As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge.

With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony. 6 *M. R.* 342.

33. Charges of perjury should contain a distinct assertion with regard to *each* statement intended to be characterized as perjury, that it was made, that it is untrue in fact, and that the accused knew it to be so when he made it, and the investigation of the Court should be directed to each of those points singly.

It does notfollow that all contradictions on oath by opposing witnesses necessarily involve perjury, nor is the making of a document without authority always forgery. 9 *W. R.* 54.

*See S. 282 N. Cr. P. C.

34. A statement, untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court. 19 *W. R.* 69.

35. A charge of perjury held unproved without proof that the statement on which it was founded was given on solemn affirmation under Act V of 1840 instead of on oath. 4 *W. R.* 24.

36. The failure of the Civil Court in a case of perjury to make a memorandum of the evidence of the accused when examined before it does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court. 9 *W. R.* 69.

37. Case of perjury by females in which the majority of the Court refused to reduce the punishment. 7 *W. R. F. B. R.* 102.

38. The prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under S. 19 of the Income Tax Act IX of 1869 to a Tahsildar: Held, that the Tahsildar was not an officer competent to receive such a petition, and that no offence was committed. 5 *M. R.* 326.

PERSONATION (*for the purpose of a suit*) *P. C. S.* 205.

39. It is necessary to a conviction for false personation under S. 205 P.C. that the accused should have assumed the name and character of the person he is charged with having personated. The fact that he presented a petition in Court in the name of that individual, held, under the circumstances of this case, to be insufficient to show any intention of falsely personating such person. 8 *W. R.* 80.

40. To constitute the offence of false personation under S. 205 P. C., it is not enough to shew the assumption of a fictitious name; it must also appear that the assumed name was used as a means of falsely representing some other individual. 4 *M. R.* 18.

41. Fraudulent gain or benefit to the offender is not an essential element of the offence of false personation under S. 205 P. C., and a conviction for false personation may be upheld, even where the personation is with the consent of the person personated. 1 *M. R.* 450.

PUBLIC SERVANT (*framing incorrect record or writing*) *P. C. S.* 218.

42. The intention is an essential ingredient in the offence contemplated by S. 218 of the Penal Code. 8 *W. R.* 27.

43. Where a Chowkeedar was charged under S. 218 P. C., with having made a false entry in a Chowkeedaree attendance-book, with a view, to support a charge which was made against a Sub-Inspector of having made a false report regarding the length of absence from duty of another Chowkeedar, and thereby to cause loss or injury to the Sub-Inspector, it was held that the intention was too remote to fall within S. 218. 19 *W. R.* 40.

44. A kulkarni who makes a false report with reference to an offence committed in his village with intent &c. is punishable under S. 218 of Penal Code. 7 *B. R. A. J.* 64.

PUBLIC SERVANT (*insulting or interrupting a—during a judicial proceeding*) *P. C. S.* 228.

45. Before a conviction can be had under S. 228 P. C. of offering an insult to a public servant, it must be proved that there was an *intention* to insult. 15 *W.R.* 62.

46. In a conviction under S. 228 P. C. it ought to be stated that the Judge was sitting in a stage of judicial proceeding, the nature of which should also be stated. 12 *W. R.* 64.

47. Held that prevarication while giving evidence does not constitute the offence under S. 228 P. C., of intentionally causing interruption to a public servant sitting in a judicial proceeding. 4 *B. R.* 6.

48. Prevarication by a witness may, though it does not necessarily, amount to contempt of Court within the meaning of S. 228 P. C. and S. 435 N. Cr. P. C. 10 *B. R.* 69.

49. Held that refusing or neglecting to return direct answers to questions does not constitute the offence under S. 228 P. C., of intentionally offering insult or causing interruption to a public servant sitting in a judicial proceeding 4 *B. R.* 7.

PUBLIC SERVANT (*obstructing—in discharge of duty*) *P. C. S.* 186.

50. The refusal of a cart-owner to give his cart on hire to a Government Officer does not constitute the offence of obstructing a public servant in the discharge of his public functions within the meaning of S. 186 Penal Code. 9 *B.R.* 165.

51 If a bailiff break the doors of a third person, in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under S. 183 or S. 186 of the Penal Code. 7 *B. R. A. J.* 83.

52. Conviction under S. 186 P. C. of obstructing a Mouzadar in the discharge of his duty, reversed, there being nothing to show that the Mouzadar is a public servant. 8 *W. R.* 66.

53. Escaping from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of S. 186 of the Penal Code. 2 *B. R.* 128.

TRANSFER &c. FRAUDULENT (*of property to prevent seizure*) *P. C. S.* 206.

54. To bring a case under S. 206 P. C. there must be a fraudulent removal, sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine. 18 *W. R.* 65.

55. A person who fraudulently removes property intending thereby to prevent that property from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under S. 206 P. C. and not under S. 145 Act X of 1859. 10. *W. R.* 46.

TRANSPORTATION (*unlawful return from*) *P. C. S.* 226.

56. To constitute the offence of escaping from transportation under S. 226 P. C., it is essential that the convict should have been actually sent to a penal settlement and have returned before his term of transportation had expired or been remitted. 4 *M. R.* 152.

XX. PUBLIC SERVANTS (OFFENCES BY OR RELATING TO)

BRIBE.

1. Where a Constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by

the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the Constable, and abetment of that offence as regards the others. 5 *W. R.* 49.

2. The taking of a gratification by a Serishtadar to influence a Principal Suddar Ameen in his decisions, is sufficient to a legal conviction, whether the Serishtadar did or did not influence or try to influence the Principal Suddar Ameen. 3 *W. R.* 10.

3. Case of offering a bribe to a jury-man. Although what passed between the prisoner and the jury-man might not have amounted to an offer of a bribe to the latter, yet it was held to be so when taken in connection with what passed between the prisoner and the jury-man's brother. 1 *W. R.* 36.

BRIBE (*attempt to—Public Servant*)

4. A conviction on a charge of attempting to receive a gratification for influencing a public servant in the exercise of his public functions, is illegal as disclosing no legal offence when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions. 3 *W. R.* 69.

GRATIFICATION (*accepting &c. corruptly influencing a Public Servant P. C. S.* 162.

5. A person who accepts for himself or for some other person, a gratification for inducing by corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under S. 161, but under S. 162 of the Penal Code. 3 *W. R.* 19.

GRATIFICATION (*Public Servant taking a—improperly*) *P. C. S.* 161.

6. On a conviction of taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. Although no appeal lay in such a case, yet the High Court upon a reference, having power to interfere, quashed the conviction. 16 *W. R.* 64.

7. A putwaree taking grain as a consideration for showing favor to the giver in the discharge of his functions as putwaree, should be convicted under S. 161, and not S. 165 of the Penal Code. 2 *N. W. P. R.* 148.

TRADE (*Public Servant unlawfully engaging in*) *P. C. S.* 168.

8. Held, that where a person's object was to deceive his employer by falsifying account-books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under S. 168 of forgery with intent to cheat, instead of under S. 465 of simple forgery. 18 *W. R.* 46.

XXI. PUBLIC TRANQUILITY (OFFENCES AGAINST)

AFFRAY—*P. C. S.* 159.

1. Where the evidence in a case failed to establish any thing like an unlawful assembly, the conviction was reduced from rioting and being members of an un-

lawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. 12 *W. R.* 72.

ASSEMBLY, UNLAWFUL, *P. C. S.* 141.

2. In order to convict of the offence of being members of an unlawful assembly, it must be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under S. 141 of the Penal Code. 9 *W. A.* 19.

3. There is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one; for, according to S. 141 P. C. an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. 18 *W. R.* 2.

4. To convict a prisoner of being a member of an unlawful assembly, and of culpable homicide not amounting murder, it must be shown that he had an illegal object in common with, and took part, in the illegal act done by the others. 1 *W. R.* 20.

5. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly and to try them together, inasmuch as they do not have "one common object" within the meaning of S. 141 of the Penal Code. 12 *W. R.* 75.

6. Where land in the possession of A was encroached on by the servants of B who committed mischief on the land, and the servants of A assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate who found as a fact that the right of defence of private property had ceased under cl. 4 S. 105 of the Penal Code. 12 *W. R.* 43.

7. Where the defendants, ryots of portion of a Zamindary sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the ryots were assembled in such numbers and so armed that nothing could be done against them. Held by the High Court that the acts of the defendants did not amount to an offence under S. 141 of the Penal Code. 4 *M. R. App.* 65.

8. Held that the act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 S. 141 P. C., although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community. 5 *M. R. App.* 6.

9. In this case in which the prisoners were convicted of being members of an unlawful assembly under S. 141 P. C. the Court held that the evidence was insufficient to warrant a conviction, there being nothing to show what was the specific unlawful object, within the scope of cls. 3 and 4. of the persons composing the assembly. 20 *W. R.* 78.

10. It cannot be said that a person intentionally joints an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property which he had a right to protect. 19 *W. R.* 66.

11. Where persons join an unlawful assembly for the purpose of committing an assault, and instead of preventing those armed from using their weapons, en-

courage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows. 7 *W. R.* 58.

12. A large body of men belonging to one faction, way-laid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first mentioned faction was wounded and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed : Held by *Norman J.* (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when retired wounded, and that he could not under S. 149 P. C. be made liable for the subsequent murder.

Held *by Jackson J.* that he remained a member of the unlawful assembly. 3 *B. L. R. A. J.* 1.

ASSEMBLY UNLAWFUL (*each member of—guilty of any offence committed*) *P. C. S.* 149.

13. Held (*Ainslie J. dissenting*) that S. 149 P. C. is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within S. 149, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object.

Per Jackson J. Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in S. 141 which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of S. 149.

Where a certain number of persons, members of an unlawful assembly (party A) attacked another party (B) who were in occupation of land, with the view to drive them off the land by force, and one of the members in party. A fired a gun at and killed one of the persons in party, (B) in consequence of a sudden and unexpected resistance which was offered by party (B) it was held (*Ainslie J. dissenting*) on a consideration of the evidence that the persons composing party (A) other than the person who fired the gun could not be convicted of murder under S. 149 P. C The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under S. 148 of the Penal Code. 20 *W. R. F. B. R.* 5; 11 *B. L. R.* 347.

ASSEMBLY, UNLAWFUL (*owner or occupier of land not giving Police notice of*) *P. C. S.* 154.

14. Held that the owner or occupier of land on which an unlawful assembly is held, cannot be convicted under S. 154 P. C unless there is a finding that the riot was premeditated. 12 *W. R.* 75.

RIOT (*attended with murder.*)

15. Held by the majority of the Court (*Seton Karr, J. dissenting*) that an attack made in the morning by an unlawful armed assembly, with the object of rescuing two thieves who had been captured during the night, and in which murder was committed, was a premeditated attack for which all concerned were liable to conviction for riot attended with murder. 4 *W. R. F. B. R.* 8.

RIOT (*liability of person on whose behalf—takes place*) *P. C. S.* 155.

16. A Zemindar ought not to be made liable under S. 155 P. C. for a sudden and unpremeditated riot which there was no reason to infer he could have anticipated, or thought likely to happen. 3 *W. R.* 54.

RIOTING, *P. C. S.* 147.

17. An assembly lawful in its inception may become unlawful by its acts. If force is used, the higher offence of rioting has been committed. 1 *W. R.* 19.

18. Persons found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt. 3 *N. W. P. R.* 174.

19. Two parties were convicted of rioting. One party consisted of not less than five persons, who were all found to have been assembled together in the fight which took place, and it was also found that they, as well as their opponents, came armed with sticks, prepared to fight, and did fight. Held, that they were not improperly convicted of rioting, their common object being to assault their opponents.

The other party only consisted of four persons. It was not found what object they had in common with the first party. The fight did not occur in a public place. Held, that they were not properly convicted of rioting. Held also, that had the fight occured in a public place, it might have been held that the common object of both parties was to commit an affray. 5 *N. W. P. R.* 208.

RIOTING (*armed with deadly weapons*) *P. C. S.* 148.

20. In a case of rioting with deadly weapons, the side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side. 8 *W.R.* 3.

XXII. STAMPS (OFFENCES RELATING TO.)

1. The passing off of a one anna stamp as a one rupee stamp is not counterfeiting a one rupee stamp. 2 *W. R.* 65.

XXIII. STATE OFFENCES.

WAGING WAR (*against the Queen*) *P. C. S.* 121.

1. In a case in which the accused was charged with abetting the waging of war against the Queen under S. 121 P. C. it was held that the Calcutta Gazette of India were admissible in evidence, under S. 8 * of Act 11 of 1855, to prove the proclamation and official communications of the Government relating to the war. 15 *W. R.* 25.

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* See S. 57 of Act 1 of 1872.

2. Application for pardon or mitigation of punishment for a political offence (*i. e.* for waging war against a power in alliance with the Queen) should be made to the Executive Government. 7 *W. R.* 100.

XXIV. WEIGHT AND MEASURES (OFFENCES RELATING TO)

WEIGHT (*being in possession of*) *P. C. S.* 266.

1. The mere possession of weights in excess of the authorised standard will not support a conviction under S. 266 P. C. a fraudulent intent must be charged and proved. 1 *B. R.* 181.

WEIGHT (*using a false*) *P. C. S.* 264.

2. Intention is an essential part of the offence of fraudulently using false instruments for weighing; and in the absence of any evidence of such intention in this case. the Court quashed the conviction and directed the return of the fines. 18 *W. P.* 7.

II. CRIMINAL PROCEDURE.

I. APPEAL.

AGENT (*appeal to*)

1. A Police Constable was tried and convicted by the Assistant Agent of Vizagapatam under S. 44 of Act XXIV of 1859, and sentenced to fine and imprisonment. On appeal, the Agent reversed the conviction and sentence on the ground that there had been irregularity of procedure on the part of his Assistant in not recording evidence for the prosecution, and in only taking down the substance of the prisoner's statement, and not the full statement as made. Held, that the question was whether there had been such error and irregularity on the part of the Assistant Agent as to prejudice the accused and to occasion a failure of justice. That if not, the order reversing the conviction was rendered bad in law by S. S. 426* and 439* O. Cr. P. C. That the accused did not appear to have been prejudiced. Consequently, the order of the Appellate Court was set aside and a rehearing directed. 6 *M. R. App.* 45. 46.

APPEAL (*acquittal on*)

2. If the evidence which comes before a Sessions Judge in a regular appeal from a Magistrate's order is not sufficient to reasonably satisfy him that the prisoners have been rightly convicted, he ought to acquit them. 20 *W. R.* 13.

APPEAL (*grounds of*)

3. Objections to the sufficiency of evidence are not a ground of appeal. 2 *W. R.* 3.

4. Where a Sessions Judge and Assessors find a prisoner guilty on his own plea, there is no ground of appeal. 5 *W. R.* 52.

5. The pleas that the prosecutor is at fend with the prisoner, and the prisoner's confession, was given at the instance of the Police, are not grounds of appeal. 2 *W.* R. 5.

APPEAL (*limitation of*)

6. Petitions of appeal to the High Court must be *presented* within the sixty days. 4 *W. R.* 31.

7. In computing the time during which it is competent to a defendant to appeal against the sentence of a Magistrate the number of days taken by the Court to prepare a copy of the sentence should be omitted. 6 *M. R.* 349.

APPEAL (*petition of*)

8. Every facility should be allowed to prisoners to enable them to prepare their petition of appeal. 13 *W. R.* 69.

9. Criminal appeals to the High Court may be disposed of by single Judges.

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* See S. 283 N. Cr. P. C.

No second petition of appeal can be allowed to be considered after a first one has been rejected by a single Judge. 17 W. R. 47; 9 B. L. R. 6.

APPEAL (*rejection of.*)

10. An appeal preferred out of time and without any explanation of the delay may be rejected at once under S. 415 O. Cr. P. C. 5 *W. R* 40.

11. In a case tried by jury, unless the parties who appeal point out in what respect the law has been contravened, the appeal should be rejected. 1 *W. R.* 21.

APPEAL (*suspension of sentence pending*)

12. Although a Sessions Judge cannot release a prisoner on trial, pending an appeal, he may suspend the sentence pending the appeal. 3 *W. R.* 57.

APPEALS (*distinction between*)

13. The directions of the law as to appeals from orders and appeals from sentences are distinct. 9 *W. R.* 18.

APPELLATE COURT.

14. The words "whether for the decision of such cases in the first instance or on appeal, or for commitment to any other Court or Officer," in S. 11 of the Code of Criminal Procedure, are not intended as an exhaustive enumeration of the functions of Criminal Courts. 5 *W. R. F. B. R.* 64.

APPELLATE COURT (*duty of*)

15. Under the O. Cr. P. C. the Appellate Courts are limitade to pronouncing judgment in the manner prescribed by section 419. * 15 *W. R.* 33; 6 *B. L. R.* 483.

16. Where there is any thing peculiar in the circumstances of a case, a Criminal Appellate Court should notice it; even when such Court confirms the conviction by the Court which tried the accused. 8 *B. R. A. J.* 101.

17. Where an appeal is preferred to a Sessions Judge from the order of a Magistrate which he considers illegal, the Sessions Judge should himself deal with the case instead of referring it to the High Court under S. 434† O. Cr. P. C. 9 *W. R.* 5; 11 *W. R.* 24.

18. Where, on appeal from a conviction by a Subordinate Magistrate, the Magistrate of the District is of opinion that the offence which the evidence brings home to the prisoner is one not triable by a Magistrate, and that an illegality has been committed, he should refer the matter for the orders of the High Court, under S. 434 O. Cr. P. C.; such Magistrate cannot himself under S. 427,‡ annul the conviction, and direct the committal of the prisoner to the Court of Session upon the proper charge. 5 *B. R.* 65.

19. A Sessions Judge in trying an appeal has to look to the offence, as charged, of which the accused has been found guilty, and to determine whether it is proved or not. He has nothing to do with the form, the offence may take owing to subsequent events. A conviction for an offence for which the accused was tried will not prevent his conviction, if guilty, of another distinct offence subsequently committed. 9 *W. R.* 65.

APPELLATE COURT (*powers of*)

20. Case in which the High Court, under S. 280$ O. Cr. P. C. having reference

* See S. 280 N. Cr. P. C. † See S. 295 & 296 N. Cr. P. C.
‡ See S. 284 N. Cr. P. C. $ See S. 489 N. Cr. P. C.

to the facts of the case and looking to S. 397 of the P. C. enhanced the punishment passed by the Sessions Judge on a prisoner who was convicted of dacoity. 20 *W. R.* 21.

COPIES OF DOCUMENTS.

21. The exemption of the Government of India, dated the 19th September 1870, cannot be extended to copies of the statement of evidence and grounds of conviction. Persons desirous of obtaining copies of such documents for the purpose of appeal must furnish stamped paper on which the copies are to be written. 6 *M. R. App.* 12.

DEPOSIT.

22. An order to repay a fee under S. 31 Act VII of 1870 is an integral part of the sentence, and the fee should be treated as a fine imposed by the Court and may be retained in deposit pending an appeal where an appeal lies. 5 *M. R. App.* 28.

EVIDENCE (*taken before Magistrate*)

23. Evidence taken before the Magistrate but not used at the trial, cannot be referred to on appeal. 8 *B. L. R. App.* 63.

FINDING (*when reversible by reason of error or defect in proceedings*)

N. Cr. P. C. S. 283.

24. On a reference by a Session Judge, in reviewing the monthly Magisterial returns, where the conviction by the Magistrate was for cheating by personation and the offence appeared to the High Court to be furnishing false information, for which the punishment awarded was legal:—Held that the Court, under S. 426 O. Cr. P. C. ought not to interfere with the conviction or sentence. 3 *B.R. A. J.* 42.

25. Where the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners instead of the witnesses being examined *denovo*, the High Court declined to interfere, with reference to S. S. 426 and 439, O. Cr. P. C. as the irregularity of procedure was one by which the prisoners were not prejudiced. 13 *W. R.* 40.

26. In a case under Chapter 14 O. Cr. P. C. in which the accused had full opportunity given him to answer the case which was made against him, the High Court felt itself precluded by S. 426 O. Cr. P. C. from interfering with the judgment of the lower Court, even if it found that there was an irregularity in the proceedings in consequence of the absence of a formal charge. 15 *W. R.* 3.

27. An accused charged with voluntarily causing hurt and with abetment of that offence was acquitted by the Magistrate of the former offence and convicted of the latter. On appeal to the Sessions Judge, that officer, professing to act under S. 426 O. Cr. P. C. convicted the accused of causing hurt and acquitted him of the abetment.

Semble, that S. 426 is in its terms confined in its operation to cases where error or defect either in the charge or in the proceedings is the foundation on which the alteration of the finding or sentence is brought; and the finding a prisoner guilty without evidence upon one charge, and acquitting him of another charge, against which the evidence is really directed, is not an error or defect in the charge or in the proceedings:

Held (*by Mitter J.*) that as the prisoner appealed to the Sessions Judge on the ground that the evidence did not warrant his conviction, and not on the ground of any error or defect in the charge or proceedings. S. 426 did not apply, and the

Sessions Judge was not competent under that section to convict the prisoner of an offence of which he had been acquitted by the Magistrate.

Held (*by Phear J.*) on a consideration of the evidence, that there was not sufficient evidence on the record to support the conviction of the accused on either of the charges laid against him. 13 *W. R.* 78.

28. Where a Magistrate convicted under certain repealed sections of a law, the High Court refused to set aside the conviction having regard to S. 426., O. Cr. P. C., as the conviction and sentence might have been passed under sections of the Penal Code, and no substantial injury had been done to the accused. 15 *W. R.* 49.

HIGH COURT (*appeal lies to*)

29. A person tried by a jury is entitled to an appeal on the facts of the offence was committed before the passing of the Penal Code. 6 *W. R.* 1.

30. An appeal lies against an order of the Session Court imposing a fine upon a witness under S. 228 P. C. for intentional insult to the Session Judge sitting in a stage of a judicial proceeding. Where the High Court were satisfied that the witness did not intend to insult the Judge the order was set aside. 4 *M. R.* 146.

31. An appeal from a sentence passed by an Officer in a Non-Regulation District invested with the powers mentioned in S. 445 A * O. Cr. P. C. lies under S. 445 C to the High Court only. 14 *W. R.* 18.

32. An appeal lies to the High Court from an order of an Officer in a Non-Regulation District invested with the powers conferred by S. 445 A. O. Cr. P. C., only when the conviction has been come to under the powers specified in that section. 14 *W. R. F. B. R.* 33; 5. *B. L. R.* 658.

33. The Assistant Magistrate having decided a case without examining the witnesses for the defence named by the prisoners, the Sessions Judge, on appeal, ordered the evidence of those witnesses to be taken by the Assistant Magistrate. Their depositions having been returned to him, the Sessions Judge proceeded to deal with the case under S. 422 † O. Cr. P. C. and convicting all the prisoners, confirmed the judgment and sentence passed by the Assistant Magistrate. Held that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that, under S. 408, ‡ O. Cr. P. C. an appeal lay from it to the High Court upon the merits.

With reference to the evidence and the probabilities of the case, the majority of the Court (*dissentient Norman, C. J.*) acquitted the prisoners. 2 *W. R.* 13.

34. The prisoner was charged under S. 471 P. C. with fraudulently using as genuine a forged document, and having been tried before a Session Judge and jury, was convicted of that offence.

The Session Judge, considering the forged document to be of the nature of those specified in S. 467, sentenced the prisoner to 10 year's transportation.

On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in S. 467, and that, that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be retried. 6 *B. R. A. J.* 43.

35. Appeals from convictions on trials by jury, where illegal evidence has been

* See S. 36 N. Cr. P. C. † See S. 282 N. Cr. P. C. ‡ See S. 271 N. Cr. P. C.

admitted, should be dealt with on the same principles as appeals in which there has been a mis-direction by the Judge or an omission on his part to give the jury proper direction.

The Appellate Court, where it finds that illegal evidence has been admitted, should consider whether it is such as is likely to have exercised a prejudicial influence on the minds of the jury, and if the Court be of opinion that it is so, it will treat the case as if it had been tried by a Session Judge with the aid of Assessors. If the evidence, (after omitting that portion of it which should not have been admitted) is sufficient to sustain the verdict, the conviction will be upheld.

In exceptional cases, where the evidence is of such a character as to suggest the consideration that its real value cannot fairly be appreciated, except by a Court which has heard that evidence given, a new trial will be directed. 6 *B. R.* 47.

HIGH COURT (*appeal does not lie to*)

36. No appeal lies to the High Court under Act XXXVII of 1855, from a conviction by the Deputy Commissioner of the Sonthal Pergunnahs. 17 *W. R.* 11.

37. When an Appellate Court under S. 422 * O. Cr. P. C., directs a Court of first instance to take additional evidence, an appeal on the merits to the High Court is not thereby given. 6 *B. R. A. J.* 64; 15 *W. R.* 33; 6 *B. L. R.* 483.

INQUIRY (*direction of further*) *N. Cr. P. C. S.* 282.

38. When an Appellate Court directs further evidence to be taken by Subordinate Court under S. 422 O. Cr. P. C., it is competent to the Subordinate Court before which such evidence is given, if any offence against public justice as described in S. 169 †O. Cr.P.C. is committed before such Court by a witness whose evidence is being recorded therein, to send the case for investigation to a Magistrate under the provisions of S. 171 ‡ O. Cr. P. C. 15 *W. R. F. B. R.* 64; 6 *B. L. R.* 698.

MAGISTRATE OF THE DISTRICT (*appeal lies to*)

39. Government may by proclamation declare and direct that an Assistant Collector in charge of the Collectorate, during the absence of the Collector, shall be, during that period, "the chief officer charged with the executive administration of the District in criminal matters;" and such officer being, within the meaning of S. 14 § O. Cr. P. C. "the Magistrate of the District" may hear appeals from Subordinate Magistrates, under S. 412 $ of the Code. 3 *B. R.* 18.

MAGISTRATE OF THE DISTRICT (*appeal does not lie to*)

40. Held that no appeal lies where the sentence of imprisonment and of further imprisonment in default of payment of a fine does not, in the aggregate, exceed the term of one month. 3 *B. R.* 15.

41. There is no right of appeal because the united sentences in three separate cases amount to more than a month's imprisonment. 6 *W. R.* 51.

OPINION (*difference of—between two Judges of the High Court*)

42. Where a difference of opinion arises between two Judges of the High Court in a criminal appeal, the opinion of the Senior Judge prevails, under S. 36 of the Letters Patent, notwithstanding S. 420. § O. Cr. P.C. 10 *W. R. F. B. R.* 45; 6 *W. R.* 88.

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* See S. 282 N. Cr. P. C. † See S. 468 N. Cr. P. C. ‡ See S. 471 N. Cr. P. C. §Repealed by N. Cr. P. C. $ See S. 266 N. Cr. P. C.

43. S. 13 Act XXIV vic., c. 101 and S. 27 of the Letters Patent of the High Court, apply to the Court in its revisional as well as in its appellate jurisdiction.

Held by *Morgan, C. J.*, and *Turner J.* (*Ross and Spankie, J. J. dissenting*). That when a case is heard by a Division Bench, and a difference of opinion arises, the opinion of the Senior Judge must prevail, and the order must issue in accordance with his judgment, a reference to a third judge being beyond the competency of such Division Bench, and an order in accordance with the views of such third judge and the junior judge is not valid.

Held also that an application to set aside such an order, is not in the nature of a riview of judgment, and is cognizable by the Court.

Where an order has been actually issued by the High Court, a Division Bench will not disturb the same, unless in the opinion of a majority of the Court the order is bad. 2 *N. W. P R.* 117.

PERSON ACCUSED.

44. The words " accused person " in S. 436 *O. Cr. P. C. do not apply to a party who has been convicted by the Magistrate under S. 411 † O. Cr. P. C. from whose sentence there is no appeal. 10 *W. R.* 16.

45. A person sentenced to one month's imprisonment by a Magistrate, from which sentence no appeal is allowed under S. 411 O. Cr. P. C. is not an accused person within the meaning of S. 436 of the same Code, so as to be admitted to bail by the Court of Session, when his case is referred to the High Court under S. 434 of the Code. 1 *B. L. R. A. J.* 7.

PRIVY COUNCIL (*appeal to*)

46. No right of appeal to the Privy Council exists in any matter of criminal jurisdiction. 18 *W. R.* 407.

47. In criminal cases the High Court will not, in general, grant leave to appeal to the Privy Council, unless some important question of law or practice, or jurisdiction is involved. 10 *B. R.* 75, 76 ; 7 *B. R. A. J.* 77.

SESSIONS COURT (*appeal lies to*)

48. An appeal lies from the summary determination of the Magistrate of a Zilla, under S. 16 Act XXXV of 1850 to the Session Judge. Such appeal need not be preferred within 8 days under S. 14 Reg. XIX of 1827. 6 *B. R. A. J.* 45.

49. Convictions under the Police Act V of 1861 are appealable like other convictions. Where the appellants are convicted by an officer exercising the powers of a Magistrate and sentenced to imprisonment exceeding the limit prescribed by S. 411 O. Cr. P. C., the appeal lies to the Sessions Court. 5 *W. R. F. B. R.* 22.

50. The Sessions Judge, on appeal, without trying the merits of the case, reversed the Magistrate's conviction in a case of theft upon a point of law, reading the Penal Code by the light of his knowledge of the English Law. The High Court reversed the Sessions Judge's reversal of the Magistrate's conviction upon the ground that his decision was wrong in point of law, and directed him to re-apprehend the accused, and re-hear the appeal on the merits. The Sessions Judge thought that the High Court had no power to order the re-apprehension of the accused, and proceeding to re-hear the appeal in the absence of the accused, acquitted him. Held that the re-trial in the absence of the accused was a nullity ; that if the accused had been convicted instead of being acquitted, the case would have had to be re-tried ; but hat, as the Sessions Judge had declared his opinion that the evidence did not make

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* See S. 390 N. Cr. P. C. † See S. 273 N. Cr. P. C.

out a case of guilt, it would be merely vexatious to the accused to order the re-trial of the case in his presence; that the High Court not only had the power to order the re-apprehension of the accused, but was quite justified in making the order; and that the Sessions Judge was bound to obey the order, and was highly censurable for his disobedience and for the course which he thought proper to adopt. 3 *W. R.* 4.

SESSIONS COURT (*appeal does not lie to*)

51. No appeal upon the merits can be entertained from a conviction which was based on no legal evidence, and which was absolutely bad in law. 8 *W. R.* 59.

52. No appeal lies to a Sessions Judge from the order of a Magistrate fining a defaulter under S. 25 of the Income-Tax Act IX of 1869. 11 *W. R.* 71.

53. There is no appeal from a conviction under S. 11 Act XIV of 1868 for a registered prostitute neglecting to appear for examination. 17 *W. R.* 12.

54. No appeal lies from an award of compensation passed under S. 22 cl. 5 Act 1 of 1871. 3 *N. W. P. R.* 200.

55. There is no appeal to the Court of Session from an order made by a Magistrate, under S. 409 * O. Cr. P. C. requiring a penal recognizance to keep the peace under S. 280. †

The Court of Session may, however, in such case, under S. 434 ‡ of the Code, call for and examine the record of the Court below; and, if it shall be of opinion that the order of the Magistrate is contrary to law, refer the proceedings for the orders of the High Court. 3 *B. R.* 1.

56. Having regard to S. S. 46 § and 411 $ O. Cr. P. C. it was held that where the sentences passed on an accused by a Magistrate are awarded for separate offences committed on different occasions, there is no appeal to the Sessions Judge by reason of the two sentences, each of which was within a limit of one month, having been passed at the same time, and being together in excess of that limit. 10 *W. R.* 3.

SUPERINTENDENT OF POLICE (*appeal to*)

57. Appeal lies to the Superintendent of Police from order of the Magistrate directing maintenance of chowkeedar in possession of Chakeran land. 1 *W. R.* 12.

II. CONTEMPT OF COURT.

1. The resistence of process of a Civil Court is punishable under the Code of Criminal Procedure. 10 *W. R. F. B R.* 43.; 2 *B. L. R.* 21.

2. Any officer of the High Court who asks for or accepts a present from any person in whose favour judgment is pronounced by the Court, is guilty of a gross breach of duty and a contempt of Court. So also any person who offers or gives such present is guilty of a contempt of Court. 8 *W. R.* 32.

3. An accused person, against whom a proclamation has been issued, must, until he has surrendered, be regarded as in contempt, and the Court will not entertain any application on his behalf. 2 *N. W. P. R.* 141.

4. An order striking off a case on account of the little prospect of bringing the guilty parties to trial, cannot dispose of the question of contempt of Court arising out of the fact of the accused having absconded to evade justice. 7 *W. R.* 40.

* See S. S. 267 & 269 N. Cr. P. C. † See S. 189 N. Cr. P. C. ‡ See S. S. 295 & 296 N. Cr. P. C. § See S. 311 N. Cr. P. C. $ See S. 273 N. Cr. P. C.

5. The Magistrate convicted the defendant of contempt of Court under S. 631* O. Cr. P. C. and sentenced him to pay a fine of Rs. 10, or in default two days' imprisonment. Held, that the Magistrate had not exceeded his powers. 6 *M. R. App.* 16.

6. The defendant was convicted of contempt of Court under S. 163 O. Cr. P. C. for having refused to sign a deposition given by him as a witness in the course of a revenue inquiry. The High Court set aside the conviction. 6 *M. R. App.* 14.

7. Where in punishing for contempt of Court, the summary procedure sanctioned by S. 163 O. Cr. P. C. is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In such a case imprisonment cannot be added to fine as a punishment. In a case which is not dealt in a summary manner, the offence must under S. 163 be tried by an officer other than the person before whom the contempt was committed. 12 *W. R.* 18.

8. A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting a fine. 4 *M. R.* 229.

9. Under S. 163 O. Cr. P. C. if a Court before which the offence of contempt under S. 179 P. C. is committed, considers that a sentence of imprisonment is called for, it should record a statement of the facts constituting the contempt and the statement of the accused, and forward the case to a Magistrate. 11 *W. R.* 49.

III. EVIDENCE.

1. An Appellate Court is bound precisely in the same way as the Court of first instance to test evidence extrinsically as well as intrinsically. 17 *W. R.* 59.

2. Every trial must be complete in itself. In deciding on the guilt of a prisoner, the proceedings in other trials ought not to be relied upon. 6 *W. R.* 7.

3. The evidence of persons who are themselves liable to punishment should be carefully sifted and tested before they can be relied on in a Court of Law. 6 *W. R.* 77.

4. Evidence which does not support a conviction on a criminal charge cannot justify a removal from a profession, (the present case being that of a mooktear). 9 *W. R.* 29.

5. A conviction under S. 289 P. C. quashed, inasmuch as evidence did not allude to the negligence of which the accused has been found guilty, and because the evidence was not taken in the presence of the accused. 2 *W. R.* 51.

6. Case quashed as decided contrary to law on the unsupported statements of prosecutor and prisoner, without recording the evidence offered on either side. 2 *W. R.* 47.

7. A conviction ought not to be reversed by reason merely of the weakness of the reasons assigned for it, when there is ample evidence of the guilt of the prisoners. 8 *W. R.* 40

8. A prisoner acquitted of criminal breach of trust may, on the same evidence, be convicted of dishonestly receiving stolen property. 4 *W. R.* 21.

9. In a case in which the complainant charged the accused with cutting and forcibly carrying away his crop of paddy, the Assistant Magistrate directed the crop to be attached, and deputed an Ameen to hold a local investigation, and subsequently,

* See. S. S. 435 & 436 N. Cr. P. C.

after examining the Ameen, but without taking the evidence for the prosecution, he held the complaint to be a false one, and ordered that the complainant should pay a compensation to the accused, and that the crop should be made over to the accused.

The High Court set aside the Assistant Magistrate's order, and ordered that the money paid under it should be returned to the complainant, and that the case should be re-tried by a Magistrate after recording the evidence of the complainant and his witnesses. 20 *W. R.* 59.

ACCOMPLICE.

10. Where the Magistrate erroneously treated a witness as an accomplice, and granted him a conditional pardon :—Held that his evidence did not require corroboration. 5 *B. R.* 85.

11. Held that the English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is, that when he speaks as to two or more persons having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the indentity of the prisoners and that any prisoner as to whom his testimony is not supported should be acquitted. 3 *B. R.* 57.

12. Held, that where the evidence of an accomplice is uncorroborated, the correct practice requires Session Judges not merely to tell the jury that it is *unusual* to convict on such evidence, but that he should also tell them that it is *unsafe*, and *contrary both to prudence and practice* to do so ; yet that his omission to state this does not amount to an error in law. 6 *B. R. A. J.* 57.

13. A person is not, by reason of being an accomplice, disqualified from giving evidence either for or against a prisoner. 6 *W. R.* 92.

14. A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice who was made a witness after a pardon was granted to him. 9 *W. R.* 28.

15. The Court (*Mitter and Pontifex J. J.; Glover J. dissenting*) refused to convict in this case on the uncorroborated testimony of an accomplice who had previously been convicted of the same offence on her own confession. 20 *W. R.* 19.

16. There is no rule of law, that the uncorroborated evidence of an accomplice is insufficient for a conviction. 4 *M. R. App.* 7.

17. The High Cout refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices. 5 *W. R.* 11,80 ; 10 *W. R.* 63.; 19 *W. R.* 48.

18. Although under S. 133 of the Indian Evidence Act, the conviction of a prisoner on the uncorroborated testimony of an accomplice is not illegal, the Court, having reference to illustration (b) S. 114 of that Act, considered in this case that the accomplice was unworthy of credit. 19 *W. R.* 43.

19. Although, by S. 133 Act 1 of 1872, an accomplice is a competent witness against an accused person, and a conviction would not be illegal merely because it proceeded upon the uncorroborated testimony of an accomplice, yet it would be unsafe, where the testimony of the accomplice is not corroborated in any material point, except by the confession of a fellow-prisoner, whose testimony likewise requires corroboration, to convict the accused. 19 *W. R.* 68.

20. Case of murder, where those prisoners whose conviction depended on the uncorroborated evidence of accomplices and an accessary after the fact, were acquitted. 5 *W. R.* 59.

21.. Where although the Judge thought that the evidence of two witnesses was inadmissible against the prisoner as being the evidence of accomplices, yet he

did not think the evidence in the case legally sufficient to justify the conviction of the prisoner, the High Court declined to interfere under S. 404 *O. Cr. P. C. Considering that the question of admissibility was a quite different matter from that of credibility. 18 *W. R.* 4.

AFFIDAVIT (*contradiction upon*)

22. Important statements made in verified petitions to the High Court, if untrue, should be contradicted on affidavit. 8 *B. R. A. J.* 126.

APPROVER.

23. The evidence of an approver is not sufficient to convict a person charged with an offence. 3 *B. L. R. A. J.* 66; 12 *W. R.* 5.

24. A Session Judge should not permit the evidence of an approver who was examined as a witness before the committing Magistrate to be laid before the jury by whom the prisoners were tried. 4 *M. R. App.* 22.

25. In a case in which the principal evidence against an accused is the evidence of an approver, a Sessions Judge should carefully warn the jury of the infirmity which attaches to that evidence, and he should also tell them (if the fact be so) that the approver is speaking under the influence of any offer of conditional pardon.

The corroboration of the evidence of an approver should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does. 10 *W. R.* 17.

26. The evidence of an approver for whose appearance at the trial there was not the slightest reason, and the mere fact that in the houses of each of the four prisoners only one article of the stolen property was found, was held insufficient, under the circumstances of this case where the best witnesses were not examined, to support a conviction of the prisoners on a charge of dacoity. 8 *W. R.* 57.

ATTESTATION OF MAGISTRATE.

27. The attestation of a Magistrate stating why he could not proceed with the further examination of a witness is *prima facie* proof of that fact, and may be laid before a jury. 12 *W. R.* 51.

28. A Magistrate ought not to use a lithographed stamp of his signature. 14 *W. R.* 81.

29. The certificate required under S. 205 † O. Cr. P. C. need not be in the hand-writing of the presiding officer, but may be under his hand only, (*i, e,*) signed by him.

Where a jury is satisfied as to the genuineness of an attestation by a Magistrate, it is unnecessary to call the Magistrate to swear to his signature. 8 *W. R.* 55.

COMMUNICATIONS (*privileged*)

30. Under S. 24 Act II. ‡ of 1855, there is no privilege as to communications between mooktears and their principals. The word "Attorney" in that law being confined to Attorneys of the High Court. 10 *W. R.* 14; 1 *B. L. R. A. J.* 8.

CONFESSIONS.

31. A person may be convicted of murder on his own confession. 6 *W. R.* 83.

32 A voluntary and genuine confession is legal and sufficient proof of guilt. 7 *W. R.* 41; 6 *W. R.* 73.

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* See S. 297 N. Cr. P. C. † See S. 346 N. Cr. P. C. ‡ See S. 126 of Act I of 1872.

33. The whole and not part of a prisoner's confession must be taken in order to his conviction. 5 *W. R.* 70.

34. A prisoner's confession must be taken in its entirety. Where a prisoner confessed that he did not suspect his wife's fidelity ; that he left home on business ; that on his return he saw what convinced him of his wife's infidelity ; and that, maddened at the sight, he killed both her and her paramour,—Held that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity. 8 *W. R.* 38.

35. The admission of prisoners in their own statements before the Magistrate ought to be given in evidence at the trial. 4 *W. R.* 18.

36. A detailed confession made by an accused before a Magistrate, but retracted on the examination being read over to him in confirmity with S. 205* O. Cr. P. C. does not amount to a confession, although the plea for retracting the confession, viz, ill-treatment of the accused by the police, may be inquired into and found to be untrue. 9 *B. R.* 344.

37. Case of a person convicted of adultery on his own admission coupled with the evidence. 7 *W. R.* 59.

38. A Sessions Judge, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate. 2 *N. W. P. R.* 479.

39. The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses, deposing to a confession, themselves arrived, from the answers which the accused gave to questions put by them.

Where an accused makes two distinct statements, the one amounting to a confession of guilt, the other repudiating guilt,—if the one statement is taken against the accused, the other also must be taken, for what it is worth, in his favour. The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other.

Documents which were in the record sent up by the Magistrate, but which were not put in evidence before the Sessions Judge, were looked at because they told in favour of the prisoner. 10 *B. L. R.* 332.

40. To give weight to confessions of prisoners recorded under S. 149† O. Cr. P. C. there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were quite free agents. 5 *W. R.* 6

41. To make the confession of a prisoner, not uttered in presence of a Magistrate, admissible in evidence, the fact discovered must be one, which, of its own force, independently of the confession, would be admissible in evidence. 3 *M.R.* 318.

42. S. 149 O. Cr. P. C. refers to cases where the confession of a prisoner has been made to the Magistrate conducting the investigation and not to the Police. It is only when properly made to the Magistrate that the confession can be used as evidence against the prisoner. The mere standing by of the Magistrate when the confession is being made to the Police is not sufficient. 12 *W. R.* 82.

43. The properly attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence and notwithstanding a subsequent denial before the Sessions Court. 6 *W. R.* 81 ; 8 *W. R.* 40 ; 12 *W. R.* 49.

44. It is not necessary for a Sessions Judge to read out to prisoners confessions made by them before a Magistrate and ask them if they have any objection to

*See S. 346 N. Cr. P. C. † See S. 26 Act 1 of 1872.

the reception of these confessions. The examination of prisoners before a Magistrate is to be received in evidence, and the attestation of the Magistrate is *prima-facie* proof of the circumstances. 14 *W. R.* 9.

45. Merely being seen getting on board a boat with four persons who have on their own admissions been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen.

To make an admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence under S. 150* O. Cr. P. C. it must be shown that the admission was antecedent to the discovery of the money. 17 *W. R.* 50.

46. An admission of crime, when fairly made after due warning, is not inadmissible, simply because, at the time it was made, no formal accusation had been made against the party making it. 4 *W. R.* 10.

47. The admission of an accused cannot be taken to be corroborative evidence, or any evidence at all, against any body other than himself. 6 *W. R.* 84. 8 *W. R.* 35; 2 *N. W. P. R.* 336.

48. An admission by A and B that the crime charged against them was committed by C and D, and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. 7 *W. R.* 8.

49. The confessions of a prisoner in one case in which he was convicted cannot be used against him in another case, unless they are disposed to on oath either by the person who took them down or by some one else who heard them. 10 *W. R.* 56.

50. Under S. 30 Act 1 of 1872, the statement of fact made by a prisoner which amounts to a confession of guilt on his part may be taken into consideration so far, and so far only, as that particular statement of fact itself extends, against the other prisoners who are being tried, as well as himself, for the offence which is thus confessed. 19 *W. R.* 16.

51. To render the confession of one prisoner jointly tried with another admissible in evidence against the latter, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried. 10 *B. L. R.* 453; 19 *W. R.* 67.

52. The confessions of persons tried jointly for the same offence may, by S. 30 Act I of 1872, be "considered" as against other parties then on their trial with them, but such confession, when used as evidence against others, stand in need of corroboration, and cannot be used as corroborating in any way the evidence of approvers against such other parties.

S. 30 Act I of 1872 ought to be construed with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial. 19 *W. R.* 57.

53. The statement of a person tried jointly with other persons for the same offence is not made less of an admission, as to all that the person knew concerning the offence, affecting himself and the other persons, by the fact of the Court not thinking him guilty of the offence charged. 5 *N. W. P. R.* 213.

54. The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable but such a confession is legally admissible in evidence when duly proved. 7 *B. R. A. J.* 56.

* See. S. 27 Act 1 of 1872.

55. A confession made to a Joint Magistrate of a District in charge of the Suder Sub-Division, is receivable in evidence, although the Joint Magistrate may not have been specially empowered under Act VIII * of 1869 to receive the confessions of prisoners. 13 *W. R.* 69.

56. The confession of an accused person taken by a Magistrate having no jurisdiction to commit or try him, is imperfect, if not signed by the accused person or attested by his mark, and is inadmissible in evidence. (S. S. 122 and 346 N. Cr. P. C.) 10 *B. R.* 166.

57. Although the averment on the record of a Magistrate by whom a prisoner is tried, that the accused, before making a confession, was warned that it was optional with him to answer the questions put to him or not, is on appeal conclusive as to the fact of such a warning having been given, it is not conclusive to show that such a confession has not been made under the influence of fear engendered by previous maltreatment or is not otherwise valueless.

Allegations, made in a regular and proper manner before a Sessions Court on appeal, that a confession made by the accused before the Magistrate who tried the case was made under such circumstances as to preclude its admissibility in, or diminish its value as evidence, should receive due attention and be enquired into. A Sessions Court refusing to make such inquiry commits a grave error in law and procedure.

Upon an inquiry which the High Court directed the Session Judge to make into such an allegation, the prisoners were ordered to be, and were, solemnly affirmed, and the prosecution neither objected to the form of the order nor to the affirmation of the prisoners, and moreover cross-examined them, but objected to their evidence being used upon the return of the inquiry. It was held that the objection, though possibly good if taken in time, was too late, and that the evidence of the prisoners might be used, whether the order directing them to be affirmed was correct or otherwise.

Where during such an inquiry the Sessions Judge accorded his sanction to the prosecution for perjury of some of the witnesses who deposed on behalf of the prisoners, the High Court considered such a proceeding improper, and eminently calculated to defeat the object of the inquiry. 8 *B. R. A. J.* 126.

58. When prisoners confess in the most circumstantial manner to having committed a murder, the finding of the body is not absolutely essential to a conviction. 4 *W. R.* 19.

59. An admission by the husband in the presence of several witnesses, that he had killed the wife, and that she died after receiving the kick was held to be direct evidence against him. 8 *W. R.* 29.

60. The accused confessed to a Police Constable, on being assured by him that nothing would happen to her, that she had killed her new-born child, and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood, and a knife, with which stone and knife, she said that she had killed her child. Before the Committing Magistrate she made the same statement. In her trial before the Session's Judge, she admitted the brith of the child, she stated that it did not cry and that she buried it, not knowing whether it was alive or dead. She also stated that the Police Constable had pressed and threatened her and told her, that if she confessed the truth nothing would happen to her. She denied having killed the child with the stone and sickle, and said that she had merely pressed it on the ground and then buried it. There was no evidence to show that the child was born alive. Held, that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say that

* Repealed by Act X of 1872.

the confession made before the Session Judge was made after the impression caused by the promise of the Police Constable had been fully removed, and that looking at the fact that a promise of safety had been made, that the confession was, even if accepted, of a limited character ; that there was nothing to show that the child was born alive, and considering that if the child was born dead, the accused might, under fear of exposure and disgrace, have wished to conceal the body, the accused must be acquitted of murder. 5 *N. W. P. R.* 86.

61. W,, a travelling auditor in the service of the G. I. P. Railway Company having discovered defalcations in the account of the prisoner, who was a booking clerk of the Company, went to him and told him that "he had better pay the money than go to jail" and added that " it would be better for him to tell the truth," after which the prisoner was brought before the Traffic Manager in whose presence he signed a receipt for, and admitted having received, a sum of Rs. 826-8-0. The prisoner was subsequently put on his trial for criminal breach of trust as a servant in respect of this and of other sums :—Held that the words used by W., the travelling auditor, constituted an inducement to the prisoner to confess, and that W. was a person in authority within the meaning of S. 24 of the Indian Evidence Act, and that the receipt signed by the prisoner was, therefore, not admissible in evidence on his trial.

Held also, that the High Court, in considering a point of law reserved under cl. 26 of the Letters Patent, where it is of opinion that evidence has been improperly admitted as to one of two heads of charge of which a prisoner stands convicted (the two heads of charge relating to distinct and separate offences) and that the conviction on such head of charge is bad, has power to review the whole case and, if it appears that the evidence improperly admitted could not reasonably be supposed to have influenced the jury as to the latter head of charge, ought not to set aside the conviction on that head of charge but should proceed to pass judgment and sentence on it.

Semble, S. 167 of the Indian Evidence Act applies to criminal trials by jury in the High Court. 9 *B. R.* 358.

62. Admissions made by prisoners to Police Officers, while in their custody, are not admissible in evidence, particularly when no witnesses are called to prove them. 3 *W. R.* 21.

63. The accused made a confession to a Police Inspector, part of which related to the concealment of certain jewels, and in consequence of the information so received, the jewels were discovered :—Held, that under S. 27 of the Evidence Act that part of the accused's confession which described his assault on the deceased, and her consequent death, and the way in which he became possessed of the jewels related distinctly to the fact of the discovery of the ornaments, and might be proved against the accused. 19 *W. R.* 51.

64. An admission obtained from a prisoner by *persuasion* and *promises* of immunity by the Police, ought not to be received in evidence, as being indirect contravention of S. 146 * O. Cr. P. C. 9 *W. R.* 16.

65. A Magistrate acts without due discretion when, as a prosecutor; he holds out promises to prisoners as an inducement to them to confess. 1 *W. R.* 24.

66. A confession made to a private individual may be evidence against the prisoner if proved by the person before whom the confession was made. 13 *W. R.* 69.

67. Admissions made by a prisoner's Vakeel cannot be used against the prisoner. 17 *W. R.* 49.

*See S. 120 N. Cr. P. C.

68. A Confession should be recorded in the language in which it is made. 4 *N. W. P. R.* 16.

CORROBORATION.

69. S. 48 * Act II of 1855 is applicable to criminal trials. 6 *W. R.* 5.

70. Rule as to corroboration of the evidence of approvers laid down generally, and in a case where the charge is one of belonging to a gang of dacoits under S. 400 of the Penal Code. 11 *W. R.* 21.

71. Comparison of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence. 5 *W. R.* 98.

72. There is no rule of law which prevents the admission without corroboration, of the evidence of a witness who says he committed breaches of the law with the accused, if the witness is not open to the same charge as the accused. 13. *W. R.* 24.

73. The practice of not examining a Police Officer who investigates a case condemned. The statements made to him might be proved by him in the witness-box and would be admissible to corroborate the evidence of other witnesses on the same point given in Court before the Magistrate and Sessions Judge, under S. 31 †Act II of 1855. 11 *W.* R. 25.

74. A Judge should compare the statements of the witnesses recorded by the Magistrate at the preliminary investigation, with the evidence of the same witnesses at the Sessions. 5 *W. R.* 54.

75. S. 28‡ Act II of 1855 applied only to the old Supreme Courts and the rules and practice prevailing in them; and does not show that in the Courts of the Mofussil corroborative evidence is legally requisite to support the testimony of an accomplice. 5 *W. R.* 11.

76. The corroboration which is needed in order to make the testimony of an approver witness trustworthy should be corroboration derived from evidence which is independent of accomplices and not vitiated by the accomplice character of the witness, and further should be such as to support that portion of the accomplice's testimony which makes out that the prisoner was present at the time when the crime was committed and participated in the acts of commissions. The statement must not merely be generally true, but true in the particular points which affect the persons accused. 19 *W. R.* 16.

77. It is not competent to a Court of Session to inspect an original report from the office of the Superintendent of Police, and to make it evidence against the prisoners. Statements made otherwise than before the Courts, and Officers specified in S. 31Act II of 1855 may be given in corroboration of testimony; but such statements must be regularly proved by the person who received them, or by some one who heard them given. 7 *W. R.* 31.

78. The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused; and the evidence of two or more accomplices requires confirmation equally with the testimony of one. 6 *W. R. F. B. R.* 18.

79. The confession of one prisoner cannot be used as corroborative evidence against another prisoner. Corroboration as to the details of the crime, without corroboration as to the person of the accused, is worthless. 13 *W. R.* 14.

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* See S. 73 Act 1 of 1872. † See S. 157 Act 1 of 1872. ‡ Repealed by Act 1 of 1872.

80. An approver's uncorroborated evidence is not sufficient as proof against other persons. 3 *W. R.* 8.

DECLARATIONS (*dying*)

81. The dying declaration of a deceased should form part of the Sessions record. 9 *W. R.* 2.

82. The dying declaration of a deceased person is admissible in evidence on a charge of rape. 6 *W. R.* 75.

83. Before a dying declaration can be received in evidence it must be distinctly found that the person who made the declaration knew or believed at the time he made it that he was dying or was likely to die. 15 *W. R.* 11.

84. In determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration under S. 371 * O. Cr. P. C., a Sessions Judge ought to direct his attention to the point whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot speak of their own personal knowledge to such declaration should not be admitted, and in deciding whether the accused is guilty of the charge of murdering the deceased declarant, the Court should confine itself to enquiring into the facts which occurred on the day of the murder. 10 *W. R.* 11.

85. A dying declaration is admissible in evidence in all criminal cases provided all the conditions attaching to its admission have bee fulfiled, and is not confined to cases in which the death of the injured party is the sole object of inquiry.

There must be some evidence of the state of the deceased person at the time of making the declaration.

The Magistrate recording a dying declaration should put on record the answer of the declarant to a question touching his knowledge or belief in his approaching death. 3 *N. W. P. R.* 212.

86. Where a Sessions Judge sees from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration, he should call for that evidence. A Magistrate should, in all cases in which dying declarations are made, examine the complainant on the point, and record the question as well as the answer to it upon the record of the examination. 15 *W. R.* 11.

DEPOSITIONS.

87. The depositions of witnesses should be recorded in the first, and not in the third, person. 16 *W. R.* 36.

88. Before depositions of witnesses taken before a Magistrate can be used in appeal, it should be shown either in the depositions or elsewhere that the evidence was read over or interpreted to the respective witnesses. 14 *W. R.* 13.

89. The Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and procuring them to affirm the truth of the same. Held, that the depositions were illegally taken, and, therefore, could not sustain a charge. 1 *B. L. R. O. J.* 37.

90. The memorandum required by S. 199 † O. Cr. P. C. should always be appended to the depositions. 13 *W. R.* 17.

91. The deposition voluntarily given before the Sessions Judge is admissible in evidence against the witness, to show the falsehood of his deposition before the Magistrate, any thing in S. 32 ‡ Act II of 1855 notwithstanding. (*Campbell J. dissentient*). 6 *W. R. F. B. R.* 65.

* See S. 32 Act 1 of 1872. † See S. 339 N. Cr. P. C. ‡ See S. 132 N. Cr. P. C.

92. The deposition of a witness in a former case is not evidence in a subsequent case in which he is examined, except when put into contradict him. 8 *W. R.* 87.

93. When a deposition is received in evidence under S. 369 *O. Cr. P. C. at a trial before a Sessions Judge, there ought to be on the record distinct proof of the existence of such a state of things as makes the deposition legal evidence. 7 *W.R.* 114.

94. Written reports of depositions are not evidence, except in the case provided for by S. 369 O. Cr. P. C. 6 *W. R.* 93.

95. The depositions of Gosha ladies examined before the Committing Officer in the presence of the accused are not admissible in evidence on the trial before the Session Court. 4 *M. R. App.* 15.

96. When a Civil Court authorizing a criminal prosecution in case of offences against public justice, instead of completing the investigation itself and committing the parties for trial before the Court of Session, simply refers the proceedings and leaves it to the Magistrate to commit or not as he thinks proper, the depositions taken before the Civil Court, are not admissible in evidence, as depositions taken before the Magistrate are in certain cases under S. 369 O, Cr P.C. But by S. 57† Act 11 of 1855, the improper admission of such evidence is not of itself ground for the reversal of the Sessions Judge's sentence, when, independently of that evidence, there is suffecient evidence to justify the decision. 6 *W. R.* 41.

97. The deposition of the Police Officers, moreover, should be taken before the admission can at all be used against the prisoner under S. 150‡ O. Cr. P. C. 9 *W. R.* 16.

EXAMINATION.

MAGISTRATE AS WITNESS (*examination of*)

98. Case in which the High Court permitted a Deputy Magistrate to be examined on behalf of a petitioner whose case was investigated by the Deputy Magistrate. 16 *W. R.* 49.

99. In a case in which a Deputy Magistrate took an active part in the capture of parties charged with having been members of an unlawful assembly—parties whom he himself tried on that charge—it was held that he was bound to state to the accused, so for as he could, what were the facts he himself observed and to which he himself could bear testimony : and the prisoner in such situation had a right, if he thought it desirable, to cross-examine the judge, whose evidence should be recorded and form part of the record in the case. The proper course, however, for the Deputy Magistrate to have taken in this case would have been to decline to try the case, and to ask that it should be undertaken by some other judge. 20 *W. R.* 76.

PERSON, ACCUSED (*examination of*)

100. A Deputy Magistrate is bound to examine the accused under S. 266 § O. Cr. P. C. in answer to the charge brought against him. 9 *W. R.* 62.

101. The discretionary power given by law to examine a prisoner should be used to ascertain from him how he may explain facts in evidence appearing against him, not to drive him to make self-criminating statements. 1 *M. R.* 199.

102. The discretion of a Magistrate under S. 202$ O. Cr. P. C., to ask questions of an accused is entirely unfettered, though an examination under that section should not be of an inquisitorial nature, and a Magistrate should inform the

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*See S. 33 Act 1 of 1872. † See S. 167 Act 1 of 1872. ‡ See S. 27 Act I of 1872. See S. 207 N. Cr. P. C. $ See S. 193 N. Cr. P. C.

accused that he is not bound to answer. Answers to questions under that section are admissible in evidence, even if the Magistrate has omitted to warn the accused he need not answer. 16 *W. R.* 21.

103. In recording the examinations of accused persons under S. 346 N. Cr. P. C. in the language in which they are given, a Magistrate need not take down the examination in his own hand: it is enough that he append a certificate that the examination was conducted in his presence, and contains accurately all that was stated by the accused person. 20 *W. R.* 50.

104. It is not necessary under S. 205 * O. Cr. P. C. to state in the body of the examination of the accused that the statement comprises every question put to the accused and every answer given by him, or that they were recorded in full and read to him, and that he had full liberty to add to or explain his answers. The Magistrate's attestation at the foot of the examination when duly recorded in the terms of that section, is sufficient *prima facie* evidence of such examination, unless the Sessions Judge doubts the genuineness of the Magistrate's signature, in which case he should take evidence on that point. The examination of the accused properly recorded is evidence, and should be allowed to go to the jury under S. 366 † of the Code. 15 *W. R.* 68; 7 *B. L. R. App.* 62.

105. A Magistrate holding a preliminary investigation under Chapter 12 O. Cr. P. C. and a Magistrate holding a trial of an offence within his jurisdiction under the 14th Chapter of the Code, has power under S.S.202‡ and 250§ to put questions to the accused and to examine him as he may consider necessary and the Court of Sessions has similar power in regard to persons on trial before that Court, but the Procedure Code makes no such provisions in respect of parties under trial under the 15th chapter. 12 *W. R.* 77.

106. Before criminating a man upon his own statement under examination, it is necessary to see that such statement has been deliberately made and recorded; that, after being recorded, it has been shown or read to the accused; and that the examination has been attested by the signature of the Magistrate following a certificate to be given under his own hand. 7 *W. R.* 49.

107. To make the examination of an accused person before a Magistrate legal evidence in a Sessions Court, something more than the mere signature of the Magistrate thereto is necessary.

The certificate under the Magistrate's hand, required by S. 205 O. Cr. P. C., must be attached. 4 *N. W. P. R.* 16.

108. Held that where the provisions of S. 205 O. Cr P. C. are not observed, and there is no certificate by the Magistrate that the examinaion of the accused was taken in the hearing and in the presence of that officer, and there is no statement that that examination contains the whole statement of the accused, a Sessions Judge acts rightly in rejecting the evidence and not allowing it to go to the Assessors. 12 *W. R.* 44; 3 *B. L. R.* 59.

109. When the examination of the prisoner by the Magistrate has not been recorded in full, so as to include the questions, as required by S. 205 of O. Cr. P. C. it cannot be given in evidence at the trial before the Court of Session under S. 366 O. Cr. P. C. without further proof.

When the examination would, either alone or with other evidence, be sufficient for the conviction of the accused, the proper course is to remand the case to the Court of Session, in order that proof may be taken of the examination.

When the evidence, exclusive of the inadmissible examination, is sufficient to

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* See S. 346 N. Cr. P. C. † See S. 248 & 346 N. Cr. P. C. ‡ See S. 193 N. Cr. P. C. § See S. 215 & 216 N. Cr. P. C.

support the conviction, it may be affirmed by the High Court without remanding the case ; and the admission of such an examination by the Court of Session does not invalidate the trial and conviction under S. S. 426 * and 439 * of the Code. 2 *B. R.* 396.

110. Held that the examination of the accused by the Magistrate, not having been recorded in accordance with the provisions of S. 205 † O. Cr. P. C., was not admissible in evidence at the trial, under S. 366 ‡ ; and the evidence, exclusive of that examination, being insufficient to support the conviction, the prisoner was acquitted by the High Court under S. 399 § O. Cr. P. C. 2 *B. R.* 125.

111. A person accused of an offence was offered a pardon, the conditions of which he accepted. On being examined he stated in detail the circumstances of the offence, and named the prisoner as an accomplice. He afterwards retracted his statement. Held, that the statement could not be used as evidence against the prisoner. 5 *N. W. P. R.* 217.

112. Under S. 366 O. Cr. P. C. the examination of the accused before the Magistrate must be given in evidence at the Sessions trial, whether it tells for or against the prisoner ; and it is not in the discretion of the prosecution to put in that examination or not. 13 *W. R.* 63.

WITNESS (*examination of*)

113. A witness may be examined either on oath or on solemn affirmation, but he cannot be both sworn and put on solemn affirmation at the same time. 13 *W. R.* 17.

114. A witness who is not a Mahomedan or Hindoo, ought to be sworn, and not examined under the provisions of Act V ¶ of 1840. 5 *W. R.* 65.

115. S. 199 ¶ O. Cr. P. C. relates to the examination of witnesses and does not apply to the examination of prisoners. 12 *W. R.* 44.

116. The rule which lays it down that witnesses cannot be examined as to information given by them to the Government for the discovery of offenders, is confined to offences against the State or for breach of the Revenue Laws, and does not apply to cases where the information has been communicated to a Magistrate and acted on by him in his capacity as Magistrate.

A Police Officer's report, though not evidence under S. 155 ₹ O.Cr. P.C., of the facts stated therein, may be evidence to contradict or explain his evidence as given before a Magistrate, and an accused has a right to cross-examine the Police-man as to the contents of such report and to call for its production. 13 *W. R.* 1

117. S. 193@ O. Cr. P. C. applies also to cases under Chapter 15 of that Code, and a Magistrate cannot dispose of a case under that Chapter without examining the witnesses called for the prosecution. 16 *W. R.* 48.

118. Where witnesses are not examined in the presence of the accused, the conviction will be quashed. 2 *N. W. P. R.* 49.

119. No conviction can be had under S. 228 P. C., simply because witnesses in a case give in consistent evidence and give their evidence reluctantly and take up the time of the Court. 15 *W. R.* 5.

EXAMINATION (*cross*)

120. In order te make a deposition admissible under S. 33 of Act 1 of 1872

* See S. 283 N. Cr. P. C. † See S. 346 N. Cr. P. C. ‡ See S. S. 248 & 346 N. Cr. P. C. § See S. 288 N. Cr. P. C. ¶ See Act X of 1873. ¶ See S. 339 N. Cr. P. C. ₹ See S. 127 N. Cr. P. C. @ See S. 190 N. Cr. P. C.

there must be evidence that the accused person did, in fact, have an opportunity of cross-examining. 20 *W. R.* 69.

121. Where a witness called by one of the parties is a competent witness, the opposite party has a right to cross-examine him, though the party calling him has declined to ask a single question. 15 *W. R.* 34.

122. Conviction quashed, the accused not having been allowed an opportunity to examine certain witnesses. 3 *W. R.* 21.

123. A witness ought to be allowed on cross-examination to qualify or correct any statement which he has made in his examination-in-chief. 18 *W. R.* 57.

124. A witness when under examination-in-chief before the Court of Sessions should not have his attention directed to his deposition before the Magistrate, he may under S. 23 * Act II of 1855 be cross-examined as to previous statements made by him in writing, when his attention may be drawn to the parts of the former writing which are to be used for the purpose of contradicting him. 13 *W. R.* 18.

125. The Judge ought, if requested, to allow the accused an opportunity of cross-examining all witnesses whose depositions have been taken for the prosecution by the Committing Magistrate but whose evidence is dispensed with by the prosecutor at the trial. His refusal to do so is, however, not an error in law. 5 *B. R.* 85.

126. When the charge has been framed and the defendant put on his defence, he has a right, under S. 218 N. Cr. P. C. to have the prosecutor's witnesses re-called for the purpose of cross-examination.

The claim to re-call the witness for the prosecution is very different from the request made by the accused person to summon a witness under S. 362 of the Code.

No appeal lies to the Sessions Court from the order of the Deputy Magistrate refusing to re-call the witnesses for the prosecution for the purpose of cross-examination, but the order is such an error as cannt be immediately corrected except by the interposition of the High Court under its powers of Superintendence and revision. 19 *W. R.* 53.

127. The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witnesses for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given, by a witness called for another of the parties accused, he must call him as his own witness. 12. *W. R.* 75.

128. The complainant's pleader was at liberty before the Deputy Magistrate to cross-examine the witnesses for the defence on points respecting which they had made statements before the Joint Magistrate, and he might do so, as regards previous statements which were reduced to writing, without showing the writing. 15 *W. R.* 23.

HABEAS CORPUS.

129. The return to a writ of *habeas corpus* must be taken to be true, and cannot be controverted by affidavit. In England, 56 George III., C. 100, S. 4 allows affidavits to be used to controvert the return in criminal matters, but that statute does not apply to this country.

The return to a writ of *habeas corpus* can, however, be amended.

A girl, under 16 years of age, has not such a discretion as enables her, by giving her consent to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to the writ of *habeas corpus* stated that a girl was above the age of sixteen (though her mother stated

* See S. 145 of Act 1 of 1872.

her to be of the age of 13 years and 9 months), the Court held that she was of years of discretion to choose for herself under whose protection she would remain. 5 *B. L. R.* 418.

IDENTIFICATION.

130. The identification of an accused after the evidence for the prosecution has been completed, will not be legally sufficient if there is nothing to show that the witnesses were on their oaths at the time they made the identification. 18 *W. R.* 33.

INQUEST REPORT.

131. Reg. XII. of 1827, S. 52, having been repealed by Bombay Act VIII of 1867, an inquest report is not admissible in evidence. 6 *B. R. A. J.* 75.

IRREGULARITY.

132. Misreception of evidence is a defect or irregularity within the meaning of S. S. 426* and 439* O. Cr. P. C. 7 *W. R.* 7.

ONUS PROBANDI.

133. In a charge under S. 498 P. C. the proof that the woman and a man, other than the accused, were living together, is sufficient to throw the burthen of proof on the accused that they were not man and wife. † 8 *B. L. R. App.* 63.

POLICE DIARIES.

134. Police diaries cannot be legally used as substantive evidence or read to the jury. 8 *W. R.* 68.

135. Where certain portions of a Police Officer's diary are used as evidence against him, S. 154 ‡ O. Cr. P. C. does not bar the admission of other portions of the diary, as explaining the portions so used. 8 *W. R.* 87.

136. Under S. 154, O. Cr. P. C. Police diaries cannot be admitted as corroborative evidence. 13 *W. R.* 22.

POLICE REPORTS.

137. Police Reports are not evidence except against the reporting Police Officer. 6 *W. R.* 52.

138. Police papers ought not to be taken judicial notice of either as evidence or consulted in order to test evidence. 8 *W. R.* 36.

PRESUMPTIONS.

139. If a criminal fact is ascertained, an actual *corpus delecti* established, presumptive proof is admissible to fix the criminal. 11 *W. R.* 25.

140. Mere possession of stolen articles of trifling value does not warrant the presumption that the receiver knew them to have been the proceeds of a dacoity, or had acquired them from one whom he knew or believed to be a dacoit. 18 *W. R.* 26.

141. Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed: and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law. 8 *W. R.* 87.

142. In a case of murder, where a man was struck on the head in a boat with a heavy paddle and knocked over-board in a large river in the height of the rains,

* See S. 283 N. Cr. P. C. † See S. 50 Act 1 of 1872. ‡ See S. 126 N. Cr.P. C.

and had never been heard of since, it was held impossible to suppose that the man was still alive. 7 *W. R.* 14.

PROCEEDINGS (*in criminal trial*)

143. The proceedings in a criminal trial, when necessary to be proved, should be proved by their production. 8 *B. R. A. J.* 37.

PROOF.

ACCIDENTS, RAILWAY (*evidence in case of*)

144. Where some coolies were employed in assisting a ballast train into motion at a Railway Station, and one of them, after pushing the train, in getting up on the train, or in attempting to do so, fell and was so injured that he afterwards lost his life,—Held that the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion. 8 *W. R.* 43.

ADULTERY (*evidence in case of*)

145. In proceedings founded on a charge of adultery strict proof is necessary of the marriage of the woman with whom adultery is alleged, and the charge should be instituted by the husband of the woman. 4 *W. R.* 31.

BREACH OF THE PEACE (*evidence in case of*)

146. When there is evidence which would justify the finding of a Magistrate that an act likely to cause a breach of the peace had been committed, the High Court will not interfere with the proceedings of the Magistrate. 4 *M. R. App.* 38.

BRIBE (*evidence in case of*)

147. The evidence of the person who bribes is admissible against the person bribed. 3 *W. R.* 19.

CASE, ANOTHER (*evidence in—before another officer*)

148. The Court set aside an order of acquittal passed by a Deputy Magistrate in a case which he tried, not on evidence taken before himself in the case, but entirely on evidence in another case before another officer (the Joint Magistrate). 15 *W. R.* 23.

CHARACTER (*evidence of*)

149. Evidence of a prisoner's previous convictions and bad character and of the bad character of his relations is inadmissible. 8 *W. R.* 11.

150. It is improper to allow witnesses for the prosecution to state that the accused is not of good character. 2 *B. R.* 125; 7 *W. R.* 7.

151. A Magistrate should take evidence as to the general character of a person charged with bad livelihood, and not convict him on the report of a Police Officer which is not evidence except against the officer making it. 5 *W. R.* 2.

CONVICTION (*by one Magistrate on evidence previously recorded before another*)

152. Where a prisoner is convicted by one Magistrate upon evidence previously recorded before another, the defect cannot be cured by the evidence being again recorded, and the conviction confirmed. 8 *W. R.* 59.

153. Where a case which has been partly heard by one officer is transferred to another officer for trial, the latter should hear all the evidence in the case before deciding it. The High Court, however, declined to interfere in a case of this sort,

as the prisoners did not appeal or raise any objection to the trial on this ground. 14 *W. R.* 3.

CONVICTION (*previous*)

154. Previous convictions are not admissible in evidence. 7 *W. R.* 7.

DACOITY (*evidence in case of*)

155. Nature of evidence required to be taken in a case of dacoity. 5. *W. R.* 51.

FALSE EVIDENCE (*evidence in case of*)

156. In a case of giving false evidence, the strictest and most accurate proof is necessary, and the testimony of a single witness unsupported by corroborative evidence is insufficient for a conviction. 5 *W. R.* 77.

157. In a case of false evidence, it is necessary to prove the deposition alleged to contain the false statement. 7 *W. R.* 13. ; 13 *W. R.* 56.

158. In trying a prisoner charged with giving false evidence a Sessions Judge rejected facts which were proved by the evidence of certain witnesses, because a medical officer gave it as his opinion that what the witnesses deposed to could not be true ; Held, that it was not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved. 11 *W. R.* 25.

159. In a case of giving false evidence by making contradictory statements, one of which the accused knew to be false, it is not sufficient to support the falseness of either story by the other deposition, but there must be independent evidence of the falseness of either story. 12 *W. R.* 66 ; 4 *B. L. R. A. J.* 4.

160. Evidence should be given that the accused really made the statement which he is charged to have made. The knowledge by the Sessions Judge of the handwriting of the presiding officer of the Court in which the statement was made is not legal evidence of such statement having been made. 10 *W. R.* 38 ; 1 *B. L. R. A. J.* 13.

GAMING-HOUSE (*evidence in case of*)

161. Conviction of keeping a common gaming-house upheld, where portion of the evidence against the accused consisted of instruments of gaming found in such house, which had been entered in pursuance of a search warrant illegally issued, there being sufficient evidence *aliunde* to justify the conviction. 5 *B. R.* 1.

ILLEGITIMACY (*evidence in case of*)

162. The High Court declined to interfere with the order of a Magistrate declaring a person to be the father of an illegitimate child, when it appeared that the Magistrate acted upon the sworn testimony of the mother, and that he called before him the person complained of as being the reputed father. 20 *W.* R. 58.

INFERENCE (*as to evidence*)

163. Corrupt intention in giving false evidence may be inferred from circumstances. 2 *W. R.* 63.

164. Where property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license or any legal permission of the owner, it is for the party in whose possession, the property is found duly to account for its possession, and unless he can do so, a jury might

fairly infer in such circumstances that it was with a guilty knowledge that the prisoner took that which he knew to be not his own. 13 *W. R.* 26.

INQUIRY, PRELIMINARY (*evidence given at the*)

165. Before the examination of a prisoner in the presence of the Committing Officer can be used as evidence against him under S. 366* O. Cr. P.C., the provisions of S. 205 † of that Code must have been complied with, and the Committing Officer's attestation affixed in full to the examination. 15 *W. R.* 83.

166. Where a statement made by a prisoner before a Magistrate, though signed by the Magistrate, does not contain the certificate directed by S. 205 of the Code of Cr. P., it does not of itself constitute *prima facie* evidence of the examination within the meaning of S. 366 of that Code; and if other proof is not given to show that the statement was made by the prisoner before the Magistrate, the statement is not admissible as evidence at the Sessions. 14 *W. R.* 10.

167. In a preliminary enquiry before a Magistrate, the evidence should be sent in as found, and not kept by the Police till they have made it all complete. 5 *W. R.* 6.

INTERPRETATION (*of evidence to accused person*) *N. Cr. P.C. S. S.* 338, 339 & 340.

168. There is not necessity under S. 198 O. Cr. P. C. for making use of a regularly sworn interpreter to interpret his evidence to a party making a statement. 16 *W. R.* 61.

KIDNAPPING (*evidence in case of*)

169. The evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for kidnapping. 7 *W. R.* 104.

LANGUAGE (*of evidence*)

170. All applications from Judges and Magistrates for bringing into operation the provisions of S. 196 ‡ O. Cr. P. C. should be made through the High Court. 5 *M. R. App.* 9.

MANNER (*of recording evidence*)

171. In a case of a dispute regarding land commenced under the old Code of Criminal Procedure, the evidence must be recorded in the manner provided for by S. 334 § and the following sections of the new Code. 20 *W. R.* 14

172. Where the evidence was taken down by the Magistrate in English, and no memo was attached to it (as required by S. 199 $ O. C. P. C) stating that the evidence was read over to the witness in a language which he understood, it was held that there had been an error in law by which the accused was materially prejudiced. 8 *W. R.* 63.

MOTIVES OF ACCUSED AS TO OFFENCE (*evidence of*)

173. The evidence as to the motives with which a prisoner commits an offence should be of the strictest kind. 10 *W. R.* 11.

MURDER, ATTEMPT TO (*evidence in case of*)

174. A young Brahman widow was confined of a child. The chief Constable

* See S.S. 248 & 346 N. Cr. P. C. † See S. 346 N. Cr.P.C. ‡ See S. 335 N. Cr. P.C. § See S. 405 N. Cr. P. C. $ See S. 339 N. Cr. P. C.

of Police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Session Judge convicted the accused of attempt to murder.

The High Court on appeal reversed the conviction, on the ground that the evidence was insufficient to support it.

It was also held in this case that the chief Constable's statement, that he "had information that the accused was about to kill the baby," was most improperly admitted as evidence against the accused. 8 *B. R. A. J.* 164.

NOTES OF ENQUIRY (*held before registering officer*)

175. The notes of an enquiry held before a Registering Officer are, not admissible as evidence of what the prisoner said on that occasion. 11 *W. R.* 13.

NOTES OF EVIDENCE.

176. A Sessions Judge's notes of the evidence should be sent up in a legible form. 4 *W. R.* 18.

PERJURY (*evidence in case of*)

177. Held by the majority of the Court (*Campbell J. dissenting*) that the evidence of one witness uncorroborated is not legally sufficient for a conviction of perjury. 5 *W. R. F. B. R.* 23.

178. Though a charge does not distinctly specify the false statement on which the evidence of perjury is attempted to be established, the omissin is not material if the accused has not been prejudiced thereby. 2 *W. R.* 51.

179. The evidence of one witness in cases of perjury is sufficient to establish the *factum* of the statement which is charged as being false. 14 *W. R.* 53.

PERSON, ACCUSED (*evidence taken in the absence of*)

180. A conviction based upon evidence taken in the absence of the accused is illegal. 3 *M. R. App.* 34.

PLUNDER OF CROPS (*evidence in case of*)

181. The mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be *proved* by evidence to be fair and good. 15 *W. R.* 47.

POSSESSION (*evidence in case of*)

182. Recognition of things not before the eyes of deposing witnesses is not evidence against a person accused of having been in possession of those things. 8 *W. R.* 16.

183. The only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband. Held, that, that constituted the possession of the husband rather than that of the wife. 5 *N. W. P. R.* 120.

PRISONER (*evidence of—taken by collector*)

184. The evidence of a prisoner taken by a Collector cannot be used against him on his trial before a Magistrate. 10 *W. R.* 23.

PROSECUTION (*evidence for the*)

185. Evidence in support of a complaint must be taken and considered before a

Magistrate can dismiss the complaint. A mere plea by an accused that the property of the theft of which he is charged is his own property, unsupported by proof or by some circumstances which tend to indicate that there is some truth in the statement, is not sufficient to entitle him to be summarily discharged. 16. *W. R.* 18.

STOLEN PROPERTY, RECEIVING (*evidence in case of*)

186. Evidence of guilty knowledge is necessary to a conviction on a charge of dishonestly retaining stolen property 6 *W. R.* 87.

SUICIDE (*evidence in case of*)

187. Evidence that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre and stood by her, her stepsons crying "Ram, Ram !" and one of the accused admitting that he told the woman to say Ram, Ram ! and she would become suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee. 3 *N. W. P. R.* 316.

SUMMONS BOOK.

188. The summons book of the Small Cause Court Calcutta, is admissible in evidence, though not signed by the presiding Judge. 6 *B. L. R.* 729.

TRIAL, FORMER (*evidence at*)

189. Previous statements of witnesses on oath or not available as evidence in a subsequent trial. 7 *W. R.* 8.

190. The former deposition of a witness should not be read until after his examination in Court. 1 *W. R.* 14.

191. Where the evidence of witnesses taken in the absence of the prisoner at a former trial was read out to them and put in on their assenting to it as a true record of the facts : Held that the proceeding was irregular and prejudicial to the prisoner, that such witness should have been subjected to a fresh oral examination, and that then the former depositions might have been put in not to add to his testimony but to corroborate it. A new trial was ordered. 3 *B. L. R. A. J.* 20.

192. When the evidence of an absent witness is admitted under S. 33 of Act 1 of 1872, the ground for its admission should be stated fully and clearly, to enable the High Court to judge of the property of its admission. In the present case the High Court considered that the evidence of an absent witness had been improperly admitted, because there was nothing to show that by ordinary care and the use of ordinary means the witness could not have been produced. 20 *W. R.* 69.

193. Upon trial of a prisoner it is illegal to read over to witnesses their depositions taken at a former trial, and ask them if they are true.

Such witnesses will be held not to have been duly examined, and a conviction founded upon their evidence will be quashed. 2 *N. W. P. R.* 100.

WEIGHING (*evidence*)

194. A Judge cannot properly weigh evidence, who starts with an assumption of the general bad character of the prisoners. 7 *W. R.* 103.

WIFE (*evidence of*)

195. The evidence of a wife is admissible against her husband in a criminal case in the Mofussil. 7 *B. L. R. A. J.* 50.

196. The evidence of a wife is not admissible against her husband in corroboration of other evidence. 1 *W. R.* 17.

197. Held by the majority of the Court (*Norman J. dissenting*) that, upon trials in the mofussil, a wife is competent to give evidence for or against her husband, or for or against any person tried jointly with her husband. 6 *W. R. F. B. R.* 21.

WITNESS, MEDICAL (*evidence of*)

198. A letter of a medical officer expressing an opinion is not evidence under S. S. 368* and 370† O. Cr. P. C. 12 *W. R.* 25.

199. A mere written certificate of a medical officer that a prisoner is of unsound mind and incapable of making his defence is not sufficient evidence of the prisoner's insanity. The medical officer should be called as a witness and be personally and carefully examined. 9 *W. R.* 23.

200. The substance of a report from a subordinate medical officer, on being an expression of concurrence by his superior, cannot be read in evidence under S. 368 O. C. P. C. 11 *W. R.* 2.

CIRCUMSTANTIAL (*evidence*)

201. Convictions must be based on substantial and insufficient evidence not merely "moral convictions". 5 *W. R.* 28.

202. Absconding is but slight evidence of guilt usually. 5 *W. R.* 28.

203. The guilt of a prisoner must be clearly proved before he can be convicted, and a weak case cannot be strengthened by the fact that the Police has had many difficulties thrown in their way. 5 *W. R.* 28.

DOCUMENTARY (*evidence*)

204. The rule of evidence that letters found in the house of a person after his arrest and whilst in custody cannot be used in evidence, is subject to the exception that the existence of the letters found may be established either by direct proof or by strong presumptive evidence. 17 *W. R.* 15; 9 *B. L. R.* 36.

205. Documents which were tendered in the civil suit, if relied on in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be received as evidence. 9 *W. R.* 58.

206. A printed official letter from the Secretary of the Government of the Punjab to the Secretary of the Government of India was held to be admissible in evidence under S. 6‡ Act 11 of 1855. 15 *W. R.* 25; 7 *B. L. R.* 63.

207. S. 200§ O. Cr. P. C. relates only to the oral evidence of witnesses. As to documentary evidence, although a prisoner has a right to have all or any part of any document used on his trial translated or interpreted to him, yet where a document is put in for the purpose of merely giving formal proof of that which is an incontestable fact, it is not necessary to interpret it at length. It would be sufficient of the prisoner was made to understand what the document was, and for what purpose it was used. 15 *W. R.* 25.

HEARSAY (*evidence*)

208. The admission of hearsay evidence prohibited. 7 *W. R.* 2.

209. The moment a witness commences giving evidence which is inadmissible *i. e.* hearsay evidence, he should be stopped by the Court. It is not safe to rely on

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* See S. 323 N. Cr. P.C. † See S. 325 N. Cr. P.C. ‡ See S.57 Act 1 of 1872. § See S. 340 N. Cr. P. C.

a subsequent exhortation to the jury to reject the hearsay evidence, and to decide on the legal evidence alone. 7 *W. R.* 25.

210. The Deputy Magistrate (under the impression that the answer would be hearsay evidence) objected to the petitioner's vakeel asking a witness as to what was the first statement made by prosecutor to him immediately after the alleged occurrence. His decision with regard to petitioner was set aside, and the case sent back for a fresh decision. 18 *W. R.* 16.

ORAL (*evidence*)

211. Oral evidence is the principal matter upon which Magistrates can proceed in determining a question of possession under the Code of Cr. P. 5 *W. R.* 79.

212. The term "Preliminary Inquiry" in the final clause of S. 346 N. Cr. P.O. means such inquiries as are the subject of Chapters 14 (of Inquiries and Trials) and 15 (of Inquiry into cases triable by the Court of Session or the High Court); and, therefore, that clause does not apply to confession recorded under S. 122 N. Cr. P.C., which refers to an inquiry not during a trial or one held with a view to committal, but an inquiry for the purpose of forwarding confessions, when recorded, to the Magistrate by whom the case of the accused person is inquired into or tried. Consequently, when a confession taken under S. 122 is inadmissible in evidence : oral evidence to prove that such a confession was made or what the terms of that confession were, is inadmissible also (S. 91 of the Indian Evidence Act). 10 *B. R.* 166.

RECORD.

213. The record of the original riot case is no evidence in the case under S. 154 of the Penal Code. 15 *W. R.* 6.

214. The Magistrate in his grounds of commitment, and the Sessions Judge in his conviction, should specifically note with exactness and precision, the proof against each particular prisoner, and the manner in which it is supported. 5 *W.R.* 6.

REPORT (*of Chemical Examiner*)

215. Under S. 370* O. Cr.P. C., the original report of the Chemical Examiner bearing his signature, and not a copy of the report, should be put in evidence. 15 *W. R.* 49; 6 *M. R. App.* 11.

SEALS (*native*)

216. The test of comparison of native seals is at best but a fallible one and must always be received with extreme caution. 6 *W. R.* 5.

STATEMENTS.

STATEMENT (*before Police Officers*)

217. Statements made before a Police Inspector are not evidence, and cannot be used as evidence in the trial; and unless it can be shown that the evidence taken before the Magistrate has been used as evidence at the Sessions trial and laid before the Judge and Assessors, and that they, after hearing that evidence, based their opinion upon it, that evidence cannot be laid before the High Court and made use of in support of an appeal. 17 *W. R.* 5.

STATEMENT (*by persons who cannot be called as witnesses*)

218. In a case of murder, the statement made by the deceased in the presence of his neighbours and of a head constable was admitted as relevent evidence, under

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* See S. 325 N. Cr. P. C.

S. 32 cl. 1 Act 1 of 1872, that section providing that such statement is relevant whether the person who made the statement was or was not at the time when it was made under expectation of death. 19 *W. R.* 44.

219. In order to make the evidence of a deceased witness legally admissible, provided the admission of the evidence is questioned, it is strictly necessary to prove the death of the witness. Proof of such fact may be dispensed with if the prisoner's council admits it. 12 *W. R.* 80; 4 *B. L. R. App.* 50.

STATEMENT, EX-PARTE

220. Ex-parte statements made in the High Court by parties who invoke the aid of the Court to transfer a case from one authority to another, ought to be based upon truth. 16 *W. R.* 49.

STATEMENT (*made under promise of pardon*)

221. A statement made under promise of pardon is no evidence agains t prisoner. 8 *W. R.* 53.

STATEMENT (*of committing officer*)

222. Where a Committing Officer in his grounds of commitment makes statements tending to criminate the prisoners, they cannot be used as evidence against the prisoners, if they were not reduced to writing, and without the examination on oath of the Committing Officer in the presence of the prisoners. 6 *W. R.* 85.

STATEMENT OF PRISONER.

223. A Magistrate is bound to file with the record any explanation that a prisoner wishes to make. 2 *W. R.* 58.

224. The statement of a prisoner, whether taken as a confession or an examination, may be received as evidence. 5 *W. R.* 1.

225. Where a statement made by an accused before the Magistrate bears the Magistrate's attestation, proof of the statement having been made is not necessary, but the proceedings must be presumed to be regular until the contrary is shown. 11 *W. R.* 39.

226. Bare statements of prisoners are not admissible in and ought not to be alluded to by the Judge as evidence. Nor is evidence taken before the Magistrate, unless contradictory of the evidence of the same witnesses as given before the Session Court, evidence in the trial or proper to be put to the jury. 7 *W. R.* 108.

227. The prisoner was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered that his courier bag, containing his watch, chain, and a sum of money, had been stolen. He reported his loss to a Railway Police Inspector at the first station at which the train stopped after he became aware of the theft, the prisoner not then being present.

The standing counsel tendered evidence of this report: held, it to be admissible under S. 8 Illustration K., of the Evidence Act 1 of 1872.

The standing counsel next tendered evidence of a statement made by the prisoner to the Constable who arrested him, to the effect that the watch and Rs. 1,000 had been given to him by his sister, and that he had bought the chain. (*Phear, J.*) observing that there is a distinction in the Evidence Act, between admissions and confessions, admitted the evidence. 10 *B. L. R. App.* 2.

228. G. D. presented a Government Promissory Note, at the Bank of Bengal, bearing a forged endorsement, and was arrested. A Police Constable asked N. if he knew G. D. N. replied that he knew him as a common man. The Police Constable

then asked N. if he knew any thing about the Note. N. replied that he did not. No threat or inducement was held out, nor was any caution administered to N. Held, that the statements made by N. in answer to the questions of the Police Constable were admissible.

N. was afterwards brought before R, the Deputy Magistrate of Serampore, who told him before any depositions were taken, that he (N) was charged with having received a stolen Promissory Note, and R. asked him if he wished to say any thing, N. replying in the affirmative, R., without administering any caution to him, asked him how or where he had obtained the Note and other questions, the answers to which were taken down. N. was again brought up before R., and was asked whether a Promissory Note then produced was the one he had delivered to G. D. to take to the Bank. R. told N. that he was not bound to answer the question, but that if he did, the answer would be taken down; and that if he objected to answer, that would also be noted. R. committed N. to take his trial before the High Court. Held, that on the trial, the answers of N. to the questions of R., whether R, acted as a Justice of the Peace for Bengal, or as a Magistrate, were admissible.

The High Court could have directed the priliminary investigation of the charge against N. by the Deputy Magistrate of Serampore, but that it did not appear in the caption of the charge or in evidence that the Court had so directed it. Held, no ground for arrest of judgment, but the objection might have been raised before the jury was sworn, under S. 41 of Act XVIII of 1862.

Semble—The High Court was bound to take judicial notice that R. was a Justice of the Peace for Bengal. 1 *B. L. R. O. J.* 15.

STATEMENT OF PRISONER (*over-heard by Police-man*)

229. The evidence of a Police-man who over-heard a prisoner's statement made in another room, and in ignorance of the Policeman's vicinity, and uninfluenced by it is not legally inadmissible. 7 *W. R.* 56.

WITNESSES.

230. The deposition of a single credible witness is sufficient evidence in law. 2 *W.* R. 3.

231. The evidence of one witness, if credible, is legally sufficient proof of any but certain exempted offences. 8 *W. R.* 60.

232. *Quere.* Whether with reference to the 28th * S. of Act II of 1855, a prisoner charged with treason can be convicted on the evidence of a single witness. 15 *W. R.* 25.

233. If a person is before the Court as a witness, his evidence must be recorded as the law directs; if he is not a witness and is not examined as such, the Judge has no right to allude to his having made any statement. 8 *W. R.* 11.

234. Where there is no community of interest any one of a number of prisoners jointly indicted may be called as a witness either for or against his co-defendants. 6 *W. R.* 91.

235. The evidence of a person stating before the jury upon oath facts which he does not know of his own observation, facts which constitute the substance of the charge against a prisoner, and which the jury themselves have to enquire into and arrive at as their verdict ought not to be allowed to go to the jury, and still less so when the person does not orally depose before the jury, but his evidence is presented to them in the form of a written deposition. 10 *W. R.* 57.

236. S. 434 †O. Cr. P.C. gives the High Court no power to interfere in a case

* Repealed by Act 1 of 1872. † See S. S. 295 & 296 N. Cr. P. C.

where the difference of opinion between the Magistrate and the Judge is as to the credibility of certain witnesses. The Magistrate's order may be an improper one, but it was passed upon legally sufficient evidence and cannot be termed illegal. 18 *W. R.* 7.

DEFENCE (*witnesses for*)

237. A prisoner on trial is entitled to have his witnesses examined. 2 *W. R.* 6; 3 *W. R.* 36.

238. An accused person is entitled to have his witnesses summoned and examined, even if those witnesses were named as implicated in the offence with which the accused is charged. 15 *W. R.* 7.

239. Where the omission of a Magistrate, in committing a prisoner, to enter on the record the names of certain persons who had been named as witnesses for the defence at the Sessions, was brought to the notice of the Judge, and an order was made by the Judge, requiring the witnesses to be served, but the witnesses did not appear and the Judge tried the prisoner in their absence and refused an adjournment in order to their production, the High Court held that the prisoner was entitled to have the benefit of the examination of the witnesses in question, and directed the Judge to examine them accordingly. 18 *W. R.* 20.

240. A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf. 6 *W. R.* 92.

JUDGES AND MAGISTRATES (*as witnesses*)

241. Magistrates are not incapacitated to give evidence of matters which have come before them in the course of a preliminary inquiry into a criminal charge. Held, that in a suit for a malicious prosecution the defendant had a right to the evidence of the Subordinate Magistrate, who held a preliminary inquiry into a charge of forgery preferred by the defendant against the plaintiff. 3 *M. R.* 372.

242. A person having to exercise judicial functions may give evidence in a case pending before him when such evidence can and must be submitted to the independent judgment of other persons exercising similar judicial functions sitting with him at the same time.

A Sessions Judge is a competent witness, and the giving of evidence by him does not preclude him from dealing judicially with the evidence of which his own forms a part.

A prisoner has a right to ask to have the evidence of a Sessions Judge who is trying him taken on a point which he thinks makes in his favour. 13 *W. R.* 60; 4 *B. L. R. A. J.* 15.

PROSECUTION (*witnesses for*)

243. A person apprehended by the Police and brought before the Magistrate, with the accused is, though not discharged by the Magistrate, a competent witness against the accused, provided he be not charged along with the accused 5 *B. R.* 1.

244. When the accused has been arrested, the evidence of a witness for the prosecution ought, under S. 194 * O. Cr. P. C. to be taken into the presence of the accused 8 *W. R.* 74.

245. There is no law or principle which prevents a person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence being afterwards admitted as a witness for the prosecution. 7 *W. R.* 44.

246. A Magistrate cannot refuse to allow witnesses whom he allowed to be cross-

* See S. 191 N. Cr. P. C.

examined by the accused previous to the preparation of a charge, to be recalled and cross-examined after the accused has been put upon his defence under S. 252 * O. Cr. P. C., treating them as witnesses for the prosecution. 17 *W. R.* 51.

IV. INQUIRY AND TRIAL (PROCEDURE INCIDENTAL TO)

BAIL.

1. Bail under S. 212 †O. Cr. P. C. can be demanded only in cases where further enquiry is pending and the accused have not been discharged. 10 *W. R.* 34.

2. In a case of contempt, the Court before which the offence is committed, is bound under S. 163 ‡ O. Cr. P. C., to accept bail if sufficient bail is tendered. 12 *W. R.* 18.

BAIL-BOND.

3. In permitting bail to be given by an accused person, a Magistrate has no right to impose conditions so as to throw difficulties in the way of the accused procuring bail. 13 *W. R.* 1

4. Where the condition of bail-bonds given by the defendants and by the surety of a security bond was that the defendants should appear when called upon :— Held that the defendants and their surety were entitled to reasonable notice of the time at which the former would be required to attend. 4 *M. R. App.* 45.

BAIL BOND (*forfeiture of*)

5. A bail bond by which the sureties bind themselves to be responsible for the appearance of the accused during the preliminary investigation cannot be forfeited if the accused abscond after the preliminary enquiry and during the trial at the Sessions Court. 9 *W. R.* 36.

6. A notice must be served on a surety calling upon him to pay the amount of his security-bond, or to show cause why he should not pay the same, before an order can be made to levy the sum from him. 9 *W. R.* 4.

7. There is nothing in S. 219 § O. Cr. P. C., which prevents an accused person who has forfeited his bail-bond by default of appearance, from being proceeded against under S. 179 P. C. notwithstanding that his surety has paid the penalty mentioned in the recognizance. 10 *W. R.* 4.

V. INQUIRY INTO CASES TRIABLE BY SESSIONS COURT.

ADJOURNMENT (*of inquiry*)

1. Where the accused, who has been duly summoned or arrested under a warrant in a case under Chapter 14 O. Cr. P. C. is present to meet any charge, and no evidence is forthcoming against him owing to the absence of the prosecutor and his witnesses, if it be not shown to the Magistrate that the case is one in which

* See S. 218 N. Cr.P.C. † See S. 389N. Cr.P. C. ‡ See S. S. 435 & 436 N. Cr.P.C. § See S. 396 N. Cr. P. C.

he ought to adjourn the inquiry under S. 224, *O. Cr. P.C. the Magistrate is bound to discharge such accused person. 15 *W. R.* 53.

2. Although an improper adjournment of an enquiry by a Magistrate was scarcely an error in the decision upon a point of law or involved any question of law justifying the interference of the High Court under S. 404 † O. Cr. P. C. the Court under S. 15 of the Charter Act set aside the order of the Magistrate adjourning the enquiry when, according to S. 224 O. Cr. P. C. there was not the absence of a witness or other reasonable cause rendering it necessary or advisable to adjourn the enquiry; the power conferred by S. 224 being one which can only be exercised in cases which come really within the terms of that section 17 *W. R.* 55.

3. A Deputy Magistrate who without reasonable cause delays, proceeding with the trial of persons, whom he keeps in jail is liable, notwithstanding Act XVIII of 1850, to an action in damages if the prisoners are eventually acquitted. By S. 224 O. Cr. P. C. a Magistrate may by a written order from time to time, adjourn an enquiry for a period not exceeding 15 days. 11 *W. R.* 19.

CALENDAR.

4. The grounds of commitment and the remarks of the Committing Officer should be entered or copied in the calendar which ought to be complete in itself. 6 *W.* R. 9.

COMMITMENT.

5. A commitment to hajut before evidence is recorded is illegal. 13 *W. R.* 27.

ADULTERY (*commitment in case of*)

6. Where the Sessions Judge directed the committal of the defendant for adultery, the defendant having been already convicted by the Magistrate of enticing away: Held, that the sentence passed by the Magistrate should have been at once annulled, the requisite intention in the one case being the substantive delicit in the other. 5 *M. R. App.* 17.

ALTERATION (*of commitment*)

7. A Sessions Judge cannot alter a commitment in a case which falls within the cognizance of a Magistrate even though the Sessions Judge thinks the evidence proves that the accused was guilty of an offence beyond the Magistrate's cognizance. The High Court refused to interfere under S. ‡ 434 O. Cr. P. C., on a reference in which the Sessions Judge ordered a commitment in such a case, although they considered that there was evidence to prove that the offence was one triable by the Court of Sessions. 10 *W. R.* 35.

ASSAULT OR HURT (*commitment in case of*)

8. A Session's Judge has no authority to interfere and direct a commitment in the case of a conviction for assault, under S. 352, or of hurt under S. 323 P. C. both of them being offences triable by the Subordinate Court. 5 *W. R.* 12.

CANCELMENT (*of commitment*)

9. A commitment once made by a Magistrate to the Sessions cannot be annulled by his allowing the prosecutor to file a compromise. 2 *W. R.* 57.

10. The Sessions Judge wished to cancel a commitment apparently on the ground of the evidence being insufficient. As the commitment was not illegal, he was ordered to try the case. 1 *W. R.* 8.

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* See S. 194 N. Cr.P.C. † See S. 297 N.Cr.P. C. ‡ See S. S. 295 & 296 N. Cr.P. C.

COMMITMENT (*after conviction*)

11. Where a Magistrate has convicted and sentenced a prisoner of an offence which such Magistrate was competent to try, and the Sessions Judge considered the case so grievous that it should not have been disposed of summarily. Held that such Sessions Judge was not competent to direct the Magistrate to commit the prisoner to the Sessions Court for trial upon the same charge. 2 *N. W. P. R.* 285.

COMMITMENT (*after discharge*)

12. A Sessions Judge may, under S. 435 *O. Cr. P. C. after a Magistrate has discharged an accused person, order the Magistrate to commit the accused person to the Sessions. 7 *W. R.* 38.

13. When an enquiry has been made and the accused discharged, the Sessions Court may order the commitment of the accused, but cannot merely direct further enquiry 3 *N. W. P. R.* 90.

COMMITMENT (*separate*)

14. Where there is a riot and fight between two factions, the members of each party should be committed for trial *separately*, and not altogether. 9 *W. R.* 33.

FALSE EVIDENCE (*commitment in case of*)

15. The Magistrate before whom the offence of intentionally giving false evidence in a judicial proceeding is committed, may himself try and commit the persons so offending. 18 *W. R.* 15.

16. A Magistrate to whom the case of a person charged with giving false evidence in a judicial proceeding is transferred for investigation, cannot commit to the Sessions without himself recording evidence and examining the complainant and his witnesses in the presence of the accused. 11 *W. R.* 22.

17. A Magistrate making a commitment for giving false evidence in respect of any offence enquired into under Chapter 12 or 14 O. Cr. P. C., must set out the *precise words*, recorded as used by the accused, containing the statement which he undertakes to prove false, and not state the *effect* of those words. 17 *W. R.* 32.

18. Where a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under S. 181 P. C., but should commit to the Sessions under S. 193 of that Code. 11 *W. R.* 24.

19. The commitment of certain persons charged under S. 193 P. C., with intentionally giving false evidence in a judicial proceeding, was held to be illegal, inasmuch as the sanction of neither the Court before or against which the offence was committed, nor of some other Court to which such Court is subordinate, was given. 18 *W. R.* 32.

20. The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. 3 *B. L. R. A. J.* 35.

21. In a case of giving false evidence by making contradictory statements, a Court of Sessions cannot, without making further inquiry, commit a person for trial under S. 172 † O. Cr. P. C. when both contradictory statements are not made before it. By the words "under its own cognizance" in that section it is meant to provide for a case where it is brought under the notice of the Court of Sessions in the course of a judicial proceeding that the crime with which the party is to be charged has been committed by him. 12 *W. R.* 69.

* See S. S. 296 & 298 N. Cr. P. C. † See S. 472 N. Cr. P. C.

HOUSE-TRESPASS BY NIGHT (*commitment in case of*)

22. A Deputy Magistrate has no power to convict of theft (S. 380 P.C.) where the offence charged is lurking house-trespass by night with aggravating circumstances (S. S. 458 and 459 P. C.) but must commit on the latter charge. 9 *W. R.* 5.

HURT, GRIEVOUS (*commitment in case of*)

23. A prisoner charged with the offence of causing "grievous hurt" should be committed for trial to the Sessions Court. 1 *B. R.A. J.* 101.

MURDER (*commitment in case of*)

24. Case of a man knocked down by a blow behind the ear and then hung up to a tree where he was found dead, in which the Magistrate convicted one of the prisoners of voluntarily causing hurt and the other of abetting the same. Conviction quashed with a view to commitment of the parties implicated before the Sessions. 6 *W. R.* 55.

OFFENCE UNDER INDIAN REGISTRATION ACT (*commitment for*)

25. Held that the committal of the accused to the Court of Session by a Magistrate for trial on a charge under S. 91 * of Act XX of 1866 was legal. The Session Court was accordingly directed to try the accused. 5 *B. R.* 7.

26. In the case of an offence under S. 94 * of Act XX of 1866, if a Magistrate thinks that a more severe sentence is necessary than he is competent to inflict under the power vested in him by Act XXV of 1861, it is competent to him to proceed under S. 226 † of that Act and to commit the accused to the Sessions; and on such committal a Sessions Judge has jurisdiction to deal with the charges and to convict and sentence the accused as provided for in the several sections of Act XX of 1866. 15 *W. R. F. B. R.* 58; 6 *B. L. R.* 692.

PERJURY (*commitment in case of*)

27. A Magistrate has no jurisdiction to try, but must commit to the Sessions, a case of perjury committed before him in the course of a proceeding taken under S. 318 ‡ O. Cr. P. C. 7 *W. R.* 104.

ENQUIRY (*preliminary*)

28. An accused should be allowed, at preliminary enquiries before a Magistrate, to cross-examine the witnesses, but whether the accused himself shall be examined upon the matter of the charge by the Magistrate is left entirely to the discretion of the Magistrate, and such discretion should not be exercised when the Magistrate thinks that the evidence for the prosecution does not disclose any proper subject of criminal charge against the prisoner. 10 *W. R.* 25.

29. It is necessary to a proper preliminary enquiry that the accused (or, under certain circumstances, his agent) should be present; that the witnesses whose evidence is to be the foundation of the commitment should be examined before him, and that he should have the opportunity of cross-examining them. It is essential too, in a case of perjury that he should know at what period he ceased to be a witness, and at which his position was changed to that of the accused. 9 *W. R.* 54.

OFFICERS (*committing*)

COLLECTOR (*commitment by*)

30. A collector, trying a suit under Act X of 1859, has authority to commit to the Sessions Judge 1 *W. R.* 47.

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* See S. 80 Act VIII of 1871. † See S. 196 In part. ‡ See S. 530 N. Cr. P. C.

COMMISSIONER, ASSISTANT (*commitment by*)

31. Where an old woman of 70 so beat a lad of 18 as to cause his death, and the Assistant Commissioner was of opinion that the beating was in the shape of chastisement such as a mother would inflict on a disobedient child, and convicted the accused under S. 304 A P. C. Held that the Assistant Commissioner had no jurisdiction in the case, and that he should have committed the accused for trial before the Sessions Court on a charge under S. 304. 18 *W. R.* 23.

MAGISTRATE (*commitment by*)

32. It is not illegal for a Magistrate to commit an accused to the Sessions without examining him or his witnesses. 2 *W. R.* 50.

33. The discharge of a person accused of an offence triable by the Court of Sessions is no bar to his being again brought, with a view to commitment, before a Magistrate who may proceed in such a case without an order from the Judge. S. 435* O. Cr. P. C. applies where Magistrate has not thought fit to commit. 8 *W. R.* 61.

MAGISTRATE (*refusal of—to investigate*)

34. A Subordinate Judge finding that a person had made a false verification of a plaint, sent his case for investigation to a Magistrate of the District, who refused to investigate it on the ground that the alleged offence was one triable exclusively by the Court of Session, to which the Subordinate Judge himself should under S. 173 †O. Cr. P. C. have committed it: Held that the Magistrate of the District was bound to proceed with the investigation of the case, according to S. 16 Act XXIII of 1861. 7 *B. R. A. J.* 29.

MAGISTRATE, ASSISTANT (*commitment by*)

35. The accused was charged with two others with criminal breach of trust. Evidence was taken in support of the charge of embezzlement; but considering that there was no evidence to convict him under S. 408 P.C., the Assistant Magistrate charged him under S. 208. Five days afterwards he was charged with forgery and called upon to plead to that charge, but no separate grounds of committal were drawn up. The High Court agreed with the Sessions Judge that the commitment in its present state was incomplete and should be quashed. 17 *W. R.* 41.

MAGISTRATE, FIRST CLASS (*commitment by*)

36. A Court of Session connot treat as a nullity the commitment of a F. P. Magistrate, on the ground that he investigated the case, and committed the prisoner, without a formal complaint being made to him, but should proceed with the trial in the usual course. 4 *B. R.* 35.

MAGISTRATE, SUBORDINATE (*commitment by*)

37. A commitment by a Subordinate Magistrate to the Sessions Court with respect to offences not exclusively triable by the Sessions Court is good. 6 *M. R. App.* 17.

SESSIONS JUDGE (*commitment by*)

38. The power of commitment conferred in a Court of Session does not extend to a case which is triable by a Magistrate. S. 435 O. Cr. P. C. refers only to cases not triable by a Magistrate. 12 *W. R.* 46; 3 *B. L. R. A. J.* 65.

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* See S.S. 296 & 298 N. Cr. P. C. † See S. S. 473 & 474 N. Cr.P.C.

39. The Court of Session can only order the commitment of an accused person in cases exclusively triable by it. 5 *N. W. P. R.* 168.

40. The power of commitment conferred on a Court of Sessions by S. 172 *O. Cr. P. C. is confined to offences committed before itself. 12 *W. R.* 31; 3 *B. L. R. A. J.* 36.

41. The power of commitment given to a Court of Session by S. 435 † O.Cr.P. C. must be exercised judicially upon the evidence before the Court, and such Court ought not to order a commitment unless the evidence appear to it sufficient for a conviction within the terms of S. 226. ‡ O. Cr. P.C.

Where such discretion has been exercised, the High Court cannot enquire into the evidence to see if it justifies the exercise of the discretion. 10 *W. R.* 25.

42. Where a Magistrate used the words acquittal and release when he intended only to discharge a person accused of an offence not triable by him,—Held that the Court of Sessions was competent, under S. 435 O. Cr. P. C. to order a commitment of such accused person. 8 *W. R.* 41.

43. Where a Judge, under S. 435 O. Cr. P. C. had directed the Magistrate to commit certain accused persons, as also to take their defence. Held that as the Magistrate could not require the accused to produce evidence nor to make a defence, the Judge should not have included such instructions in his order of commitment, but that the order was not therefore invalid. 1 *N. W. P. R.* 50.

44. The prisoner was committed to the Court of Session for trial on the 21st day of December 1872, and the record was sent to the Deputy Commissioner of Jaloun. Under the new Code of Criminal Procedure which came into force on the 1st day of January 1873, the Deputy Commissioner was no longer a Court of Session but received powers under S. 36 to try, as a Magistrate, classes of cases which formerly he would have tried as a Court of Session.

The Deputy Commissioner, disregarding the commitment, took the case up afresh as a Magistrate of the District under S. 36. Held, that this was clearly illegal, and that the Magistrate was bound to have sent the commitment on to the proper Court, and had no power—a trial being in progress—to commence a new enquiry in the same matter against the prisoner. 5 *N. W. P. R.* 219.

SESSIONS JUDGE (*discretion of—to order commitment*)

45. A Sessions Judge has discretion to order the commitment to the Court of Sessions of any accused person discharged by the Magistrate. The non-exercise of such discretion cannot be interfered with by the High Court. 2 *W.R.* 14.

SMALL CAUSE COURT JUDGE (*commitment by*)

46. A Small Cause Court Judge if it is his intention to proceed under S. 173§ O. Cr. P. C. should complete the investigation, and either commit or hold to bail the accused persons to take their trial before the Court of Session. 1 *W. R.* 5.

OFFICERS, COMMITTING (*duty of*)

47. The duty of a Committing Officer is to ascertain whether by the evidence for the prosecution *a prima facie* case is made out against an accused. 3 *N. W. P. R.* 27.

48. A Magistrate making an enquiry with a view to commit, is bound to record specially the evidence on which the commitment is made. 2 *W. R.* 65.

* See S. 472 N. Cr. P. C. † See S. S. 296 & 298 N. Cr. P. C. ‡ See S. 196 N.Cr.P. C. in part. § See S.S. 473 & 474 N. Cr.P. C.

OFFICERS, COMMITTING (*duty of*)

49. Where the High Court had jurisdiction to try a prisoner for the offence committed, if a charge had been made against him by a person authorized to make that charge, and the prisoner pleaded "not guilty",—Held, proof need not be given that the officer had authority to send up the charge. Objections to the jurisdiction should be made before pleading to the general issue. 1 *B. L. R. O. J.* 15.

PARDON (*tender of*)

50. The provisions of S. 209 *O. Cr. P. C., apply to cases triable by the Magistracy concurrently with the Sessions Court. 3 *M. R. App.* 2.

51. The power given to a Magistrate by S. 209 O. Cr. P. C. cannot properly be exercised except with a view to the committal of a case for trial before a Court of Session. 3 *M. R. App.* 4.

52. On a reference by a Session Judge, where certain persons were found guilty of gaming, by a F. P. Magistrate, solely on the evidence of a person supposed to have been concerned in the offence, whom the Magistrate had pardoned:—Held that a Magistrate has no power to tender a pardon in a case which he tries himself; but only in the case of an offence triable by the Court of Session. 3 *B. R.* 59.

53. A Magistrate in competent to tender a pardon to any person. The fact of such party being directly or indirectly concerned in the offence does not preclude him from being admitted as a witness for the Crown under S. 209 O. Cr. P. C. 6 *W. R.* 94.

54. A Sessions Judge is not competent, before a trial, to instruct a Magistrate to tender a pardon under S. 210 †O. Cr. P. C. 7 *W. R.* 114.

55. Held, that a Sessions Judge acted irregularly in at once trying and convicting a person who had been granted a conditional pardon by the Magistrate, and who had been sent up to the Sessions Court as a witness for the crown. The Sessions Judge was directed to order the Magistrate to commit the accused to the Sessions for a fresh trial after hearing his defence and examining his witnesses. 19 *W. R.* 43.

56. A conditional pardon was tendered to and accepted by the accused. He then, on solemn affirmation, made a statement before the Committing Magistrate in which he criminated himself and two other persons. Three days afterwards he voluntarily came forward and made, on solemn affirmation, another statement, in which he retracted and contradicted what he had said in his former statement. The conditional pardon was thereupon cancelled, and the accused was put upon his trial: Held that the first statement was admissible as evidence against the accused under S. 32‡ of Act II of 1855. 8 *B. R. A. J.* 103.

57. Where a person to whom a tender of conditional pardon has been extended is considered by the Sessions Judge not to have conformed to the conditions under which pardon was tendered, the Sessions Judge in exercising the power given him by S. 211 § O. Cr. P. C. ought not to try him along with the prisoners in whose case he has already given testimony. 14 *W. R.* 10.

PERSON, ACCUSED (*committing to jail*)

58. Before committing an accused person to Jail, otherwise than for mere temporary custody, the Magistrate must be satisfied on evidence that some case is made out against the prisoner, or that there are reasonable grounds for believing that he has been guilty of the offence imputed to him. 13 *W. R.* 1.

* See S. 347 N. Cr. P. † See S. 348 N. Cr. P. C. ‡ See S 132 Act 1 of 1872. § See S. 349 N. Cr.P. C.

WARRANT (*of commitment*)

59. The warrant which a Magistrate is empowered to issue under S. 68 * O. Cr. P. C. is not a warrant of committal and does not justify detention of the party arrested for any longer period than is necessary for his production before the Magistrate, and as soon as the party has been brought before the Magistrate, the warrant is exhausted. A fresh warrant under S. 222 †or S. 224 ‡O. Cr.P. C. must be issued if the accused is to be committed or to be detained further. 13 *W. R.* 1.

V. JURISDICTION.

BAILIFF (*power of*)

1 A Civil Court's bailiff in executing a process against the movable property of a judgment-debtor, has no authority to use force and break open a door or gate. 7 *W. R.* 12.

CHIEF EXECUTIVE OFFICERS OF DISTRICT (*powers of*)

2. Held,with reference to the provisions of S.S. 445 A§ and445 B$ of Act VIII of 1869 that the Chief Executive Officer of a Non-Regulation Province is bound to proceed under the provisions of Act XXV $of 1861,in the trial of offences punishable by a Court of Sessions, and that he must try the prisoners with a Jury or Assessors, even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Sessions. 18 *W. R.* 59.

CIVIL COURT (*powers of*)

3. A former decision in a civil suit in which the issue was the genuineness or otherwise of a kuboolcut and the Court held that it was not genuine, but added (as an *obiter dictum*) that the pottah produced by the other side was authentic, does not bar the jurisdiction of a Civil Court in sanctioning a commitment for forgery in respect of the pottah. 5 *W. R.* 50.

4. A Civil Court has no jurisdiction to make a declaratory order as to the paternity of an illegitimate child. 20 *W. R.* 58.

COLLECTOR (*powers of*)

5. A Collector who entertains a charge under S. 168 ¶O.Cr.P. C. of an offence against any Court or Public Servant, should not try the case himself as Magistrate, nor, unless under very exceptional cases, give evidence as a witness before himself as Magistrate. 9 *W. R.* 13.

COMMISSIONER, DEPUTY (*powers of*)

6. A Deputy Commissioner, in a Non-Regulation Province comes,under S. 14? O.Cr. P. C., under the designation of Magistrate of the District, and is competent to decide upon an appeal preferred under S. 412 @O.Cr.P. C. from an order of a Subordinate Magistrate who has exercised jurisdiction in a case in which he had no jurisdiction. 16 *W.R.* 1.

7. The High Court refused to interfere on a reference made to it by a Deputy

*See S. 142 N. Cr. P. C. † See S. 303 N. Cr. P. C. ‡ See S. 194 N. Cr. P. C. § See S. 36 N. Cr. P. C. $ Repealed by Act X of 1872. ¶ See S. 467 N. Cr. P. C. ? Repealed by Act X of 1872. @ See S. 266 N. Cr P C.

Commissioner in a case which was sent up for heavier punishment to the Deputy Commissioner under S. 46 N. Cr. P. C. by a Magistrate of the second class ; as the Court was of opinion that the Deputy Commissioner, instead of refering the case, ought under that section to have tried the prisoners himself, and convicted them of any offence which he thought was made out against them by the evidence. 20 *W. R.* 15.

CRIMINAL COURT (*powers of*)

BRITISH SUBJECT.

8. A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him whether wholly within or wholly without, or partly within and partly without, the British Territories in India, provided they amount together to an offence under the Penal Code. 2 *W. R.* 60.

CONVICTION.

9. A Lower Court has no power to quash its own conviction though illegal. 6 *W. R.* 70.

INDEPENDENT STATE SUBJECT.

10. The subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British Territories, may be so amenable on a charge of kidnapping from those territories. 1 *W. R.* 39.

OFFENCE (*committed on the High Seas*)

11. An offence committed on the high seas but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Indian Penal Code.

The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of the Stat. 12 and 13., Vict. c. 96 S. S. 2 and 3, extended to India by Stat. 23 & 24 *Vict*, c. 88.

Semble. The Governor General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India, though he has power to legislate in respect of offences committed on the high seas within three miles of its coasts.

Where certain of the inhabitants of the village of Manori, in the Thana District, sallied out in boats and pulled up and removed a number of fishing-stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village : It was held (*1*) that a Mrgistrate F. P. in the Thana District had jurisdiction over the offenders ; (2) that the Indian Penal Code was the substantive law applicable to the case ; and (3) that the offence amounted to mischief within the meaning of S. S. 425 and 427 of that Code. 8 *B. R. A. J.* 63.

SENTENCE.

12. The Lower Criminal Courts cannot punish, as abetters, persons who gave evidence in support of false charges or rather charges found by such Courts to be false. 18 *W. R.* 28.

HIGH COURT (*powers of*)

13. The High Court being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed, but the contrary, 1 *B. L. R. C. J.* 15.

APPELLATE SIDE.

EVIDENCE.

14. The High Court has no power to interfere on a question of evidence. 1 *W. R.* 16.

PROCEEDINGS OF SESSIONS JUDGE.

15. The High Court has no jurisdiction to quash the proceedings of a Sessions Judge and to declare that the Sessions Judge acted illegally in making any observations upon the merits of a case in which, while admitting that he had no power to interfere, he should not have passed any opinion upon the evidence. 5 *W. R.* 2.

REFERENCE.

16. In a referred case, and not an appeal, if the High Court deems a conviction wrong, the only course open to it, is to annul the conviction and order a new trial for the proper offence. 5 *W. R.* 41.

17. After a sentence has once been passed by a competent authority, the High Court has no more power to interfere with it than a private individual, except upon appeal, or on reference, or by way of revision as provided by the Code of Criminal Procedure. 7 *W. R.* 1.

REVISION.

18. The High Court as a Court of Revision can interfere with a judgment of acquittal or conviction, and can also enhance punishment. 5 *W. R. F. B. R.* 45.

19. The High Court as a Court of Revision has jurisdiction to set aside a finding of acquittal by a Sessions Court by virtue of S. 405 O. Cr. P. C. 4 *M. R. App.* 70.

20. Held, that that High Court as a Court of Revision, under S. 404* O. Cr. P. C. has no jurisdiction over European British Subjects in criminal cases. 3 *W. R.* 64.

21. When a Judge acquits a prisoner of murder, the High Court cannot, either as a Court of Appeal or as a Court of Revision, find that, according to the evidence, the prisoner caused death with the knowledge mentioned in cl. 4 S. 300 P. C. nor can the High Court, however wrong it may think the Judge to have been in acquitting of murder, or however inadequate it may think the sentence to be, correct the error or enhance the sentence. 5 *W. R. F. B. R.* 2.

22. The High Court can only interfere under S. 434† O.Cr.P. C. when there is some illegality in the proceedings of a Lower Court. 12 *W. R.* 46.

23. Where a Sessions Judge after a careful and deliberate weighing of the evidence on the record comes to a conclusion unfavourable to the accused, the High Court is not justified in interfering under S. 297 N. Cr. P. C. however much it might hold a contrary opinion as to the value of the evidence. 20 *W. R.* 61.

24. The failure of the Judge to convict the prisoner on the graver charge is not an error of law with which the High Court can interfere under its revising powers. 5 *W. R.* 32.

25. Where there is a failure of justice, or where the prisoner has been prejudiced by the defecting summing up of the Judge, the High Court can interfere either by discharging the prisoner if the evidence on the record is not sufficient to convict him, supposing the trial to have taken place with the aid of Assessors, or to direct a fresh trial. 18 *W. R.* 66.

26. There is nothing in S. 404 O. Cr. P. C. which obliges the High Court to interfere; and in cases in which it is clear that substantial justice has been done, the Court is not bound and ought not to interfere even if, on some small point of law, the Judge below has made a mistake. 18 *W. R.* 23.

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* See S. 297 N. Cr. P.C. † See S. S. 295 & 296 N. Cr. P. C.

27. The High Court as a Court of Revision cannot say that a Sessions Judge is wrong in point of law, because he does not, in the exercise of his discretion under S. 367 * O. Cr. P. C. postpone a case for the evidence of a witness. 12 *W. R.* 44.

28. The High Court has jurisdiction having regard to S. S. 297 and 64 N. Cr. P. C., to take cognizance of and revise the proceedings of a Magistrate while they are in an interlocutory state of pending investigation, and may suspend such proceedings without having the record before it, it may also in such a case order bail to be taken from the person accused. 20. *W. R.* 23.

29. Under S. 405† O. Cr.P.C. the High Court cannot mitigate or remit a sentence passed by a Magistrate and confirmed in appeal by the Sessions Judge, when there is no error of law in the conviction. In this case the sentence appeared to the Court to be excessive, but the Court could not interfere. 4 *W. R.* 15.

30. The High Court (like the Sessions Judge) cannot nullify the verdict of a jury by interfering to lessen the punishment. S. 405 refers to cases where the offence is proved but where the punishment inflicted is held to be too severe,and not to cases where the conviction itself is considered improper. 6 *W. R.* 6.

31. Where a Subordinate Magistrate of the 1st class acting without jurisdiction held a trial and acquitted the accused person under S. 255‡ of the O. Cr. P.C. held that the High Court alone could set aside the finding under S. 404 and that the Magistrate of the District had no power to do so under S 435§ of the Code as amended by Act VIII of 1869. 4 *M. R. App.* 61.

32. The extraordinary power given by S. 404 O. Cr. P. C. was declined to be exercised to quash proceedings, held under a *bona fide* exercise of discretion in a case where a fine was imposed for keeping a piggery in a filthy state. 17 *W.R.* 58.

33. Where the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the prisoners and the Court of Appeal from such Court did not constitute the offence of cheating of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence. 9 *B. R.* 418.

34. The High Court declined to interfere in four cases of dismissal by the Magistrate and Deputy Magistrate referred by the Judge—the *first*, because the Judge considered that mere persistence in demand of rent did not amount to trespass justifying the right of private defence as held by the Magistrate—the *second*, because the Judge considered that the Magistrate's reasons, viz, (1) want of explanation of the cause of complainant's *presence* on the spot where the alleged assault was committed, (2) want of explanation of *delay* in making complaint, and (3) want of material evidence in the shape of *bruises*, were not sufficient in law to justify a summary dismissal—the *third*, because the Judge considered that the mere assertion of a claim to land by the accused did not justify the dismissal of the criminal charge as to theft of its produce, and that the Deputy Magistrate should be directed to hold a proper enquiry and dispose of the case after recording evidence ;—and the *fourth*, because the Judge considered that delay in making complaint was not of itself a legal ground for dismissal, particularly where an explanation of the delay is tendered 16 *W. R.* 65.

35. Prisoner was convicted by one Court of criminal intimidation on a charge by A, the conviction being confirmed on appeal by the Judicial Commissioner; but was acquitted by another Court of assault and robbery alleged to have been committed on the same day, on a charge by B. The latter Court pointed out to the Judicial Commissioner that the facts proved in B's case, raised a strong presumption that A's case was a false one, the result of a conspiracy against the prisoner ; and

* See S. 192 N. Cr. P. C. † See S.S. 294 & 297 N. Cr. P. C. ‡ See S. 220 N.Cr. P. C. § See S.S. 296 & 298 N.Cr.P.C.

the Judicial Commissioner proposed to set aside the conviction of the prisoner in A's case, not on the evidence in that case, but on extraneous evidence derived from B's case. Held that the High Court had no jurisdiction in the matter; but that the Judicial Commissioner could apply to the Government for a pardon on the ground stated by him. 6 *W. R.* 42.

SENTENCE.

CONTEMPT (*punishing for*)

36. The High Court, as a Court of Record, has the power of summarily punishing for contempt. 8 *W. R.* 32.

ENHANCEMENT (*of sentence*)

37. The High Court cannot enhance a legal sentence. 1 *W. R.* 19.

38. The High Court has no power to enhance a sentence (though it may consider it much too lement) on persons convicted under S.S. 143 and 148 of the Penal Code. 1 *W. R.* 13.

MITIGATION (*of sentence*)

39. The High Court has power to mitigate, on the ground of its being excessive, a sentence passed by a Magistrate and confirmed in appeal by the Sessions Judge, or a sentence passed in appeal by the Sessions Judge altering a sentence passed by a Magistrate. 6 *W. R. F. B. R.* 7; 4 *M. R. App.* 36.

TRANSFER (*of cases*)

40. The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate. 6 *B. R. A. J.* 69.

41. The High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed.

But when the transfer can be made without risk of any improper interference with the course of justice and without much inconvenience to the parties and witnesses the transfer would be proper not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid. 5 *M. R.* 212.

42. The High Court has power, under S. 29 of its Letters Patent, to transfer a criminal case from a Court in the Mofussil for trial before itself.

The mere possibility or probability that difficult questions whether of law or of fact will arise is no reason for transferring a case under S. 29, there being a sufficient remedy provided in the right of appeal to the High Court.

It is under S. 35 [*] of the O. Cr. P. C. and under that section alone, that the High Court ought to order the transfer of criminal cases from one Court to another,—except in very special cases. 15 *W. R.* 69.

ORIGINAL SIDE.

EUROPEAN BRITISH SUBJECT.

43. A European British Subject is liable to be tried in the High Court of Bombay for an offence against the Indian Penal Code committed in the territories of a Native Prince in alliance with Government upon charges framed under the Penal Code. 8 *B. R. O. J.* 92.

[*] See S. 64 N. Cr. P. C.

44. The defendant, a European British Subject, was charged with having committed three offences at Banglore punishable under the Penal Code:—Held, that the High Court has the same criminal jurisdiction which the late Supreme Court had, and that, Banglore being within the territories of the Maharajah of Mysore, a Native Prince in alliance with the Government of Madras, the defendant was subject to the jurisdiction of the High Court in respect of criminal offences committed in the territory of Mysore. 2 *M. R.* 444.

JUDGE OF THE HIGH COURT.

45. A Judge of the High Court making an order in the original criminal jurisdiction of that Court is not a Court subject to the control of the Court under S. 15 of the 24 and 25 Vic., c. 104. 15 *W. R.* 60.

OFFENCES (*upon the high seas*)

46. The substantive law applicable to a British-born Subject tried in the High Court of judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English Law, and not the Penal Code, notwithstanding the provisions of stat, 30 & 31 vict., c. 124, S. 11.

The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is so destroyed in consequence.

The procedure applicable in such cases is the ordinary criminal procedure of the High Court.

There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship, when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed. 7 *B. R. O. J.* 89.

47. In prosecuting a British Subject for an offence committed on board a British ship upon the High Seas, Held, 1—(*Phear, J. dubitante*) that he must be charged with an offence under English Law; 2—That the punishment must be according to English Law; 3—That the trial must be according to the procedure of the Local Court.

Therefore where a British Subject was charged before the High Court with having committed an offence under 7 William IV, and 1 Vict. c. 85. S. 2, on board a British ship, upon the High Seas, within the Admiralty jurisdiction of the Court, and found guilty of an offence under 14 and 15 Vict. Chapter 19, S. 5: Held, that the conviction was good, and that the prisoner would be rightly punished with "rigorous imprisonment," which is defined by S. 53 P. C. to be "imprisonment with hard labour," and that the trial had been rightly proceeded with under Act XIII of 1865.

It ought to appear upon the face of a charge that it had been delivered to the clerk of the Crown by a Justice of the Peace or a Magistrate but its not so appearing is a formal defect only, to which objection can only be taken under S. 41 of Act XVIII of 1862 before the jury has been sworn, and it is not ground for arrest of judgment. 1 *B. L. R. O. J.* 1.

TRANSFER OF CASES (*for trial*)

48. The construction of S. 29 of the Letters Patent is, that the High Court has power, if in its discretion it thinks right to exercise it, to transfer the investigation or trial of any criminal offence committed in Calcutta to a Mofussil Court, which is otherwise competent to try it, or to direct the trial by the High Court of an offence committed in the Mofussil "competent to investigate it" does not in-

clude competency as regards local jurisdiction; but only competency with regard to the offender, the nature of the offence, and the punishment. 1 *B. L. R. O. J.* 15.

TRIAL.

49. Act XVIII of 1862 S. 17 does not apply to a trial before a Sessions Judge, but only to trials on the original side of the High Court. 20 *W. R.* 51.

50. The prisoner was convicted at a Criminal Sessions of the High Court for supplying liquor without a license, an act made punishable by Madras Act 1 of 1866: Held (*Holloway J.* dissented) that the High Court had no jurisdiction inasmuch as the Act which creates the offence declares it to be punishable by a Magistrate.

Quere. Whether the Local Legislature has power to enact that a European British Subject shall be punishable by a Magistrate on summary conviction for an offence newly created by the Local Legislature. 5 *M. R.* 277.

JUDGE OF THE SESSIONS COURT (*powers of*)

APPEAL.

51. The Sessions Court has jurisdiction to hear appeals from the sentences of a Justice of the Peace acting under the Merchant Seamen's Act 1 of 1859. 2 *M. R.* 473.

52. Although the effect of S. 21* O. Cr. P.C. is to give exclusive original jurisdiction to the Magistrate of the District in the trial of cases under S. 7 Reg. XXI of 1827 for abetting the smuggling of opium, that, (S. 21) does not exclude the appellate jurisdiction vested in the Court of Session by S. 409 † of the Code. 9 *B. R.* 166.

BRITISH-BORN-SUBJECT.

53. Whether or not an accused is an European British Subject is a matter of fact to be determined judicially by the Court of Session on the evidence, in the event of the prisoner raising that question. 10 *W. R.* 6.

54. The prisoner pleaded that he was a British born Subject and therefore not amenable to the jurisdiction of the Session Judge of Tellicherry, by whom the prisoner had been convicted of criminal misappropriation.

The evidence showed that the prisoner was the legitimate great grandson of John Turnbull, said to have been a Serjeant in the service of the King or of the East India Company, but was insufficient to establish a lawful marriage between him and a Native Christian woman by whom he had a son, and the evidence as to his nationality was also incomplete.

Held, that the plea to the jurisdiction was not made out. 6 *M. R.* 7.

COMMITMENT.

55. Where the Session Judge is of opinion that a Subordinate Magistrate has convicted the defendant of an offence which the Subordinate Magistrate has no power to try, the Session Judge may, under S. 435 ‡ O. Cr. P. C. annul the conviction and direct the committal of the accused for trial. 5 *M. R.App.* 32.

56. In a Case in which the accused was charged under S. 200 P. C. of the offence of using as true a false declaration which by law is receivable as evidence, the Magistrate, after taking evidence, discharged the accused, as he was of opinion that the charge was not made out, and that the evidence did not justify his framing any other charge against the accused.

The Sessions Judge, acting under S. 296 § O. Cr. P. C. then directed the Magistrate to commit the accused for trial for forgery:

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* See S. 6, 7 & 8 N. Cr. P. C † See S. S. 267 & 269 N. Cr. P. C. ‡ See S. S. 296 & 298 N. Cr. P. C. § See S. 505 N. Cr. P. C.

Held, that the Sessions Judge's order was bad, (1) because it was too vague and indefinite as it did not specify the document which was forged and the particular in regard to which it was forged; and (2) because it directed the committal of the accused of an offence with which he had not been in any form accused before the Magistrate,—S. 296 empowering the Sessions Judge to direct a commitment only for some offence with which the accused was substantially charged in the complaint, or which was specified in the warrant, or which was framed as a formal charge by the Magistrate at the preliminary hearing. 19 *W. R.* 30.

ORDER.

57. The order of a Session Judge to quash proceedings held before a Magistrate F. P. annulled as having been made without jurisdiction. 5 *B. R.* 15.

SENTENCE.

COMMENCEMENT (*of sentence*)

58. A Sessions Judge has no power to declare that a sentence shall run from a period prior to the conviction. 4 *N. W. P. R.* 8.

COMMUTATION (*of sentence*)

59. A Sessions Judge cannot, on appeal from a Magistrate's decision, inflict a term of imprisonment in commutation of a fine longer than that which the Magistrate himself could have inflicted. 1 *B. R.* 139.

CONFIRMATION (*of sentence*)

60. Held that a Sessions Judge has no power to quash a sentence passed by an Assistant Sessions Judge and by him submitted for confirmation, and direct new sentences to be passed, even supposing the sentence of the Assistant Session Judge to be illegal. 5 *B. R.* 3.

61. Held that an order of a Session Judge by which he altered a conviction by the Assistant Session Judge of "dacoity" to one of "robbery" was illegal, not being an amendment of a sentence or order within the meaning of S. 22* O.Cr.P. C.

Held further that if the accused were, in the opinion of the Sessions Judge, improperly convicted of "dacoity," he ought to have declined to confirm the sentence, and to have left them to be charged with and tried for "robbery." 5 *B. R.* 22.

DEATH.

62. In a case of affray attended with murder, in which the offence was committed before the Penal Code came into force, a Sessions Judge has himself power under S. 4 Act XVII † of 1862 to pass sentence of death, instead of referring the matter for confirmation to the High Court. 11 *W. R.* 76.

MITIGATION (*of sentence*)

63. Held that a Sessions Judge has no power to mitigate a sentence passed upon a prisoner who has not appealed to him. 5 *B. R.* 24.

REVERSAL (*of sentence*)

64. A Sessions Judge in appeal can quash an illegal conviction by an Assistant Magistrate in a case. 8 *W. R.* 30.

65. A Sessions Judge is quite competent on appeal to reverse a conviction by a Deputy Magistrate, if he thinks that the evidence is insufficient to establish a criminal offence against the prisoner. 5 *W. R.* 56.

* See S. S. 6,7,8,18 & 20 N. Cr. P. C. † Repealed by Act X of 1872.

66. It is only when a Court Subordinate to a Court of Session convicts a person of an offence not triable by such Court, that the Court of Session can annul the conviction and sentence. If the prisoner is guilty of an offence beyond the jurisdiction of the Subordinate Court, the Court of Session should refer the case to the High Court. 4 *W. R.* 11.

67. A Deputy Magistrate restored to an accused, money found in his house along with stolen property, the prosecutor having failed to prove that the money was his. The Sessions Judge on appeal reversed that order, and directed the money to be made over to the prosecutor. Held, that the order of the Sessions Judge was made without jurisdiction. Held, further, that the order of the Deputy Magistrate was one which could not be interfered with by the High Court as a Court of Revision. 9 *W. R.* 57.

REVISION (*of sentence*)

68. A sentence duly passed and recorded cannot be revised by the Judge. 4 *M. R. App.* 19.

SUSPENSION (*of sentence*)

69. A Sessions Judge has no authority to suspend his own sentence. 4 *M. R. App.* 2.

70. A Sessions Judge has no power to suspend a sentence in a case in the absence of appeal. 5 *M. R. App.* 1.

TRIAL.

ABDUCTION.

71. Case of abduction of a child for the purpose of stealing its ornaments, which, instead of being committed to the Court of Sessions for trial, was improperly disposed of by the Magistrate as a case of theft. 6 *W. R.* 2.

BREACH OF TRUST (*criminal*)

72. Where a tindal of a small vessel had been convicted of criminal breach of trust which appeared to have been committed in the Portuguese possession of Goa, but no order was recorded by the Session Judge of Manglore who tried the case under S. 9 Act 1 of 1849 :—Held that there ought to be a new trial. 5 *M. R. App.* 13.

DACOITY (*attended with murder*)

73. Case of a prisoner who after having committed Dacoity attended with murder, absconded to Bhootan. On the annexation of the Bhootan Dooars by the British Government, he was arrested, and after conviction, was sentenced to transportation for life. 2 *W. R.* 49.

NATIVE SUBJECTS.

74. The Session Court of Bellary has no jurisdiction, under the Penal Code, to try Native Subjects of the Jaghirdar, or Rajah, of Sundoor for offences committed in the Platean of Ramandroog upon native inhabitants of the village of Ramandroog.

Ramandroog is a portion of the territory of Sundoor, and the Rajah is in the position of a Native Chief or Ruler.

A Treaty entered into by the late Rajah of Sundoor with the Government of, Madras contained the following stipulation :—

"It being probable that, as European Officers take up their residence on the

said Hill, many servants, tradesmen, private persons and others will reside there I have relinquished to the company's Government the Police and Magisterial functions of maintaining peace and trying and punishing offences committed by such people, such as violence, petty crimes, thefts, murder, &c. The Collector is to have jurisdiction in such matters."

Held : that this treaty did not give the Session Court of Bellary jurisdiction, but it surrendered exclusive criminal jurisdiction over a limited class of persons, namely Europeans and their servants, and all other resident persons, not Native Subjects of the Rajah, and left the Government unfettered to provide in the way they deemed right for the trial and punishment of offences committed by such persons. 3 *M. R.* 354.

WAR, WAGING (*abetment of*)

75. The Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war did not take place in Patna, the rule of law as to abetment being that, where parties concert together and have a common object, the act of one of the parties done in furtherance of the common object and in pursuance of the concerted plan is the act of the whole.

The jurisdiction of the Sessions Court at Patna was not affected by the erroneous statement in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna, such erroneous statement being an error or defect in the charge which is cured by S. 426 * O. Cr. P. C.

The issue of a warrant of commitment by the Governor General in Council, under Reg. III of 1818, cannot be treated in the nature of a conviction of the person so placed under personal restraint, so as to give immunity to the person so committed and afterwards discharged from all Political offences committed before that period, on the ground that he has already been tried, convicted, and punished. 17 *W. R.* 15.

JUDGE OF SMALL CAUSE COURT (*powers of*)

76. A Judge of a Small Cause Court may enquire into a charge that a decree was passed by his predecessor in the plaintiff's favor without the plaintiff's knowledge and on a forged document. 4 *W. R.* 25.

LEGISLATIVE COUNCIL (*powers of*)

77. Although the old East India Company had power, under the Charters of Charles II., to make laws affecting British-born Subjects, yet this power ceased in A. D. 1709, when its Charters were surrendered to Queen Anne. From that date down to the passing of the III. and IV. William 4, Chapter 123 (with the exception of a limited power of legislating as regarded the local limits of the Presidency Town), no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born Subjects can be found.

Semble that neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the III. and IV. Wm. 4 c. 123.

With the exception of offences made punishable, by the 53rd Geo 3, c. 155, by Justices of the Peace, the Recorder's Court had, by virtue of the 37th Geo. 3, c. 142, S. 10, exclusive criminal jurisdiction over British-born Subjects throughout the Bombay Presidency ; and the same exclusive jurisdiction was continued to the late Supreme Court, and is now exercised by the High Court, with the like

* See S. 283 N. Cr. P. C.

exception, and some further exceptions introduced by subsequent Acts of the Government of India.

The Bombay District Police Act VII of 1867, passed by the Governor of Bombay in Council for making Laws and Regulations, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the Mofussil, being also Justices of the Peace, over British-born Subjects, as it thereby affects the Acts of Parliament under which the High Court is constituted, and interferes with the criminal jurisdiction which that Court possesses over British-born Subjects in the Mofussil, which jurisdiction is exclusive except in so far as it is limited by stat. 53 Geo. 3, c. 155, S. 105, and certain subsequent Acts of the Government of India. 7 *B. R. A. J.* 6.

MAGISTRATES.

78. The words "a Magistrate" in S. 149* O. Cr. P.C. mean "any Magistrate" and not merely "the Magistrate having jurisdiction." 7*B. R. A. J.* 56.

79. A Magistrate as an Executive Officer is not bound to attend to a Judge's extra-judicial observation not warranted by law. 17 *W. R.* 59.

80. The only acts or omissions over which a Magistrate has jurisdiction, under Act I of 1858, are those specified in the 1st section. Cases under S. 6 of the Act are not cognizable by a Magistrate. 4 *M. R. App.* 21.

81. Madras Act III of 1865 authorizes every Magistrate to take cognizance of offences against Act XIII of 1859. 4 *M. R. App.* 64.

ASSISTANT MAGISTRATE (*powers of*)

ENTERTAINMENT (*of cases*)

82. An Assistant Magistrate of a District has no jurisdiction to entertain a case as of his own knowledge under S. 68 † O. Cr. P. C. as he does not fill the character of a Magistrate of a District, or Magistrate in charge of a Division of a District.

Where a case did not come before an Assistant Magistrate on complaint, or in any other way than by transfer from the Magistrate of the District who himself initiated the proceedings under S. 68, the proceedings of the Assistant Magistrate were declared to have been without jurisdiction. 19 *W. R.* 30.

83. The offence of giving false evidence in a stage of a judicial proceeding is not cognizable by an Assistant Magistrate. 8 *W. R.* 30.

SECURITY.

84. A Deputy Collector having committed an agent for false verification of a plaint, the Assistant Magistrate acted without jurisdiction in having taken security from the agent for the appearance of his principals before having obtained the sanction of the Deputy Collector to proceed against the principals. 4 *W. R.* 7.

TRIAL

85. An objection was taken before the Sessions Judge in the hearing of an appeal that the Head Assistant Magistrate had no jurisdiction to try the case, he having a distinct local jurisdiction which did not include the town where the offence was committed. It appeared that the Head Assistant Magistrate had received general instructions from the Magistrate of the District, as a temporary arrangement, to take up criminal cases arising within the limits of the said town, which was not within his division. Held, upon these facts that the Head Assistant Magistrate had no jurisdiction. 6 *M. R. App.* 43.

CANTONMENT MAGISTRATE (*powers of*)

86. A European British Subject was convicted by the Cantonment Magistrate,

* See S. 26 Act 1 of 1872. † See S. 142 N. Cr. P. C.

under S. 48 of the Police Act XXIV of 1859 : Held, that the Magistrate had no jurisdiction. 5 *M. R. App.* 25.

DEPUTY MAGISTRATE (*powers of*)

ATTACHMENT (*mode of—by Civil Court*)

87. The legality or formality of the mode of attachment, allowed by a Civil Court, is not a matter for a Deputy Magistrate's consideration. 8 *W. R.* 17.

COMMITMENT.

88. A Deputy Magistrate cannot commit a person for forgery under S. 170 * O. Cr. P. C. when the Civil Court has sanctioned the prisoner's committal under S. † 169 O. Cr. P. C. unless with the express sanction of that Court. 2 *W. R.* 31.

CONVICTION.

89. Convictions under S. 2 Act IX of 1863, and sentences of one month's rigorous imprisonment, as well as an order for confiscation of cotton, set aside for want of evidence to show that the Deputy Magistrate who tried the case had jurisdiction in the matter over the persons convicted; and for want of evidence of fraud. 3 *B. R.* 12.

CONVICTION (*previous*)

90. The jurisdiction of a Deputy Magistrate compete nt to try the offence charged is not affected by the previous conviction of the prisoner. 5 *W. R.* 53.

EUROPEAN BRITISH SUBJECT.

91. A Deputy Magistrate ought to give an opportunity to a prisoner to plead that he is a European British Subject. 5 *W. R.* 53.

92. The mere statement of a prisoner that he is a European British Subject, made before the Deputy Magistrate after the trial had been completed, cannot be acted on. 5 *W.* R. 53.

OBSTRUCTION (*orders to prevent*‡)

93. Where a Deputy Magistrate, without taking evidence, made an order under S. 62 of ‡O. Cr. P. C. changing a day on which a haut used to be held, and, subsequently, on taking evidence, found that his first order was wrong and passed without jurisdiction, he was held to have acted properly in recalling his first order. 13 *W. R.* 72.

94. Where a new *haut* was established about half a mile from a long established market, and the Deputy Magistrate was of opinion that the holding of the two *hauts* on the same days of the week would induce a breach of the peace. Held that the order passed by the Deputy Magistrate, under S. 62 *O.* Cr. P. C. directing petitioner to abstain from holding his *haut* on certain days, was not beyond his power or out of his jurisdiction to pass, and therefore was one with which the High Court could not interfere under S. 404. §O. Cr. P. C. 18 *W. R.* 22.

95. A Deputy Magistrate has no jurisdiction under S. 320 $ O. Cr. P. C. to order a ditch which was once a pathway, but afterwards filled up to be opened out, and a wall built upon it before any complaint was made regarding the filling up of the ditch, to be pulled down. Even if he had such jurisdiction he should not pass such an order without legal proof that the use of the ditch and pathway was open to the public or to the prosecutor. 5 *W. R.* 57.

SENTENCE.

FINE.

96. A Deputy Magistrate exercising the full powers of a Magistrate has juris-

* See S. 469 N. Cr. P. C. † See S. 468 N. Cr. P. C. ‡ See S. 518 N. Cr. P. C. § See S. S. 297 N. Cr. P.C. $ See S. 532 N. Cr. P. C.

diction under S. 29 Act V of 1861, to fine Police Officers for violation of duty. 4 *W. R.* 2.

TAX, MUNICIPAL.

97. A Deputy Magistrate has no authority to order arrears of municipal tax due by a person, to be paid out of a fine levied on him. 8 *W. R.* 17.

TRANSFER OF CASES (*for trial*)

98. Where a Deputy Magistrate has once made an order transferring a case for trial to the Magistrate, he has no power to cancel the order and re-place the case on his own file. 12 *W. R.* 18.

TRIAL.

CONFINEMENT, WRONGFUL; AND EXTORTION.

99 A Deputy Magistrate cannot try a case which includes a complaint of wrongful confinement and extortion, but should follow the rule laid down in S. 276 *O. Cr.P.C. 3. *W. R.* 28.

CRIMINAL TRESPASS, UNLAWFUL ASSEMBLY, AND MISCHIEF.

100. A Deputy Magistrate should adjudicate on charges of criminal trespass, unlawful assembly, and mischief, instead of referring the case under S. 318 † O. Cr P. C. to the Magistrate.

A Deputy Magistrate vested with the powers of a Subordinate Magistrate of the 2nd class. cannot institute proceedings under the said section. 2 *W. R.* 2.

HOUSE-TRESPASS.

101. Where a charge was preferred before a Deputy Magistrate against certain persons of having come armed with swords and with a large retinue and torches, and of having entered the complainant's house by night and carried off thence a large amount of property the Deputy Magistrate on the evidence convicted the parties of house-trespass under S. 448 P. C. The Sessions Judge thought that the offences charged, if proved, amounted to house-breaking by night or to some other offence within the jurisdiction of the Court of Sessions, and asked whether he could direct a commitment:—Held, that the Deputy Magistrate had neither convicted nor discharged any person of an offence not triable by him, that he had jurisdiction to try the offence charged, and that the sentence passed was within his competency. 6 *W. R.* 70.

OFFENCES (*under S. S.* 174 *and* 458 *P. C.*)

102. A Deputy Magistrate not in charge of a Division of a District has no jurisdiction to try a case under S. 174 P. C. which originated under S. 68 ‡O. Cr. P. C. and which was not referred to him by the Magistrate of the District. 10 *W. R.* 4.

103. A Deputy Magistrate has no jurisdiction in the case of an offence coming under S. 458 of the Penal Code. 1 *W. R.* 34.

POLICE OFFICER.

104. By Madras Act III of 1865 a Native Deputy Magistrate has power to try Police Officer above the rank of a Private charged with offences under the Madras General Police Act XXIV of 1859 notwithstanding the proviso in S. 50 of the latter enactment. 4 *M. R. App.* 54.

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* See S. 45 N. Cr. P. C. † See S. 530 N. Cr. P. C. ‡ See S. 142 N. Cr. P.C.

THEFT.

105. A Deputy Magistrate has no jurisdiction to try and convict, as for theft, persons whose offence is in reality that of dacoity. He can only commit them to the Sessions. 6 *W. R.* 49.

DISTRICT MAGISTRATE (*powers of*)

COMMITMENT.

106. Where a Magistrate committed to the Court of Sessions for an offence cognizable by himself, but which (by explanatory note 3rd) prefixed to Schedule annexed to the Code of Criminal Pocedure, and it appeared convenient that that Court should try and pass sentence on the accused, the High Court declined to interfere. 8 *W. R.* 46.

107. Where a case is committed to a Magistrate under S. 277 * O. Cr. P. C. the Magistrate alone has jurisdiction, and cannot commit to the Sessions on the ground that he considers the sentence which he is empowered to inflict is insufficient. 10 *W. R.* 50.

108. The High Court quashed a commitment in a case in which the charge was that of adultery under S. 497 P. C. where it appeared that the Committing Officer had no jurisdiction, by reason of the offence having been committed at places beyond the local limits of the Sessions Division to which the accused was committed, and where the Sessions Judge considered that there was no evidence to found a charge of enticing away the complainant's wife within such jurisdiction. 19 *W. R.* 31.

109. Where a Magistrate of a District who had discharged a prisoner was subsequently directed by the Sessions Judge to commit him for trial, and the commitment was eventually made by the Joint Magistrate. Held, that such commitment was not illegal.

Although ordinarily the order of the Sessions Judge would be directed to the Magistrate who had discharged the accused person, yet there is nothing in the Criminal Procedure Code to prevent such Sessions Judge from directing a committal by any Magistrate who is authorized to make commitments. 2 *N. W. P. R.* 132.

110. A Magistrate of the District has no power to direct a Subordinate Magistrate to commit for trial in the Sessions Court accused persons who have been discharged by the Subordinate Magistrate, and such committal when made by the Subordinate Magistrate is illegal. The Sessions Court is the only authority empowered by law to direct a committal. 4 *M. R. App.* 31.

COST (*realization of*)

111. A Magistrate has no power to realize the cost of a constable from an individual. 1 *W. R.* 15.

DEPOSIT.

112. A Magistrate has no jurisdiction to order a sum of money deposited under S. 228 †O. Cr. P. C. for the refund of which an application was made, to be credited to Government. 6 *M. R. App.* 9.

ENTERTAINMENT (*of cases*)

113. Under the Code of Criminal Procedure a Magistrate has only jurisdiction to entertain a criminal charge either when a complaint is made before him by a person properly qualified to complain and prosecute, or when he himself of his own

* See S. 46 N. Cr. P. C. † See S. S. 200 & 359 N. Cr.P.C.

knowledge and discretion starts the proceedings in cases in which he has such power given him. Where, therefore, a Registrar under Act XX of 1866, transferred a complaint made before him to the Magistrate's Court; and afterwards himself sitting as Magistrate ordered the matter to be made over to the Police, it was held that this did not amount to the institution of a criminal charge under the Criminal Procedure Code. 10 *W. R.* 21.

114 In the case of a prosecution under Act XX of 1866 a Magistrate has full power to entertain and finally adjudicate on the charge, and is not bound to commit to the Sessions. The words in S. 95* of that Act "all prosecutions under this Act shall be instituted before a person exercising the powers of a Magistrate," being interpreted to mean that the whole of a criminal trial from complaint to adjudication shall be carried out before and by the same person. 10 *W. R.* 21.

EUROPEAN BRITISH SUBJECT.

115. In a prosecution under the Indian Police Act V of 1861, the Magistrate is bound to take into consideration and determine a prisoner's plea that he is a European British Subject.

S. 29 Act V of 1861 does not give to the Magistrate jurisdiction over European British Subjects. 3 *N. W. P. R.* 128.

116. A Magistrate is not empowered to try an European British Subject under cl. 5 S. 83 of Act 1 of 1859, (the Merchant Shipping Act). 4 *M. R. App.* 23.

117. A Magistrate being also a Justice of the Peace has no jurisdiction to try a British-born Subject under the Penal Code. His jurisdiction in the trial of such subjects is governed and limited by 53 Geo. 3., c., 155, S.105, and Act VII of 1853, neither of which gives him power to award imprisonment in default of payment of a fine. 6 *B. R.* 14.

118. Where a Magistrate, being also a Justice of the Peace convicted a British-born Subject of mischief under S. 426 P. C. the High Court annulled the conviction and sentence, and directed the accused to be committed to take his trial before the High Court, unless the complainant withdrew the charge, under S. 271† O. Cr. P. C. 7 *B. R. A. J.* 1.

FINDING.

119. A Magistrate is not authorised to alter his finding once recorded. 6 *M. R. App.* 18.

FOREIGN STATE SUBJECT.

120. S. 31 ‡ O. Cr. P. C. does not confer jurisdiction upon a Magistrate to try the subject of a foreign state for "receiving stolen property" when the offence of receiving such property has been committed outside the British territories. 4 *B. R.* 38.

INVESTIGATION.

121. In a case where it is doubtful whether the offence is committed in British or Foreign territory, the question of jurisdiction cannot be fully determined unless the Magistrate proceeds with the investigation and states what in his opinion is proved by the evidence of the witnesses. 9 *W. R.* 29.

122. Although a Civil Court acted irregularly in sending to the Magistrate for investigation a case of using or attempting to use false evidence when no suit was pending in that Court, yet as the Court had given its sanction to the prosecution of the offence,—Held that it was in the competency of the Magistrate under S. 68 § O. Cr. P. C. even without a charge or complaint to proceed to investigate, and, if necessary, to commit for trial to the Sessions Court. 8 *W. R.* 9.

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* See S. 81 Act VIII of 1871. † See S. S. 188 & 210 N. Cr. P. C. ‡ See S. 66 N. Cr. P. C. § See S. 142 N. Cr. P. C.

LAND DISPUTES.

123. A Magistrate has no power to decide a question of possession, under S. 318* O. Cr. P. C., until he has recorded a proceeding stating the grounds of his being satisfied that the dispute for possession is likely to induce a breach of the peace. 3 *B. L. R. A. J.* 76.

124. A Magistrate has no ground for proceeding under Chapter 22 of the O. Cr. P. C. where there is no dispute as to the fact of actual possession of either the land or crop. 4 *M. R. App.* 13.

125. A Magistrate may lease land attached under S. 319† O. Cr. P. C. 17 *W. R.* 38.

126. The jurisdiction given by S. 320‡ of the O Cr. P. C. to decide for a time the right to enjoyment of property should not be exercised except on clear and satisfactory proof. Where the only evidence is that of user it should be such as to show satisfactorily acts of enjoyment exercised as a matter of right and permitted uninterruptedly for some considerable length of time. 4 *M. R App.* 26.

127. A Magistrate is not competent to interfere under S. 318 O. Cr. P. C. with the execution of a decree of the Civil Court. When a Civil Court decree has been passed regarding the whole or any portion of disputed land,it is the Magistrate's duty to maintain that decree, and he cannot again institute under S. 318 proceedings as regarding the land covered by it. 16 *W. R.* 24.

128. A Magistrate can maintain a Chowkeedar in the possession of his Chakeran-land (*i. e.* land set apart for his subsistence by his Zemindar). 1 *W. R.* 12.

129. A certificate under Act XXVII of 1860 only authorises the holder thereof to collect the debts due to the estate of a deceased person, but does not entitle him to recover or to take possession of any property belonging to the deceased from any person who may be in possession (whether wrongful or rightful) of that property. The Magistrate ought to maintain the person in possession, and leave the other party to bring a suit in the Civil Court to prove his title to the property independently of the certificate. 18 *W. R.* 35.

130. A Magistrate may direct a Deputy Magistrate vested with the full powers of a Magistrate, to pass proper orders in a case of disputed possession of land decided by him under S. 318 O. Cr. P. C. but he cannot withdraw the case from the file of the Deputy Magistrate, and, instituting a fresh case, dispose of it himself. 3 *W. R.* 53.

NUISANCE.

131. In the case of a complaint under S. 308 § O. Cr.P.C. for the removal of an obstruction from a thoroughfare, a Magistrate should first enquire if the road is a public one or not. If he finds in the affirmative, he has jurisdiction to proceed; if in the negative, he should withhold his hand and abstain from carrying out the order for removal of the obstruction. 15 *W. R.* 67.

132. When cause is shown by a party under S. 308 O. Cr. P. C. it is the duty of a Magistrate to,and he must, enquire whether there is a thoroughfare within the meaning of the section, and whether there is an obstruction. It cannot be said that, in entering upon that enquiry, he is not acting within his jurisdiction. If he decides any point of law erroneously, the case falls under S. 404¶ of the Code; but if he decides upon evidence before him, the case does not come within the section in question, even if his decision upon the evidence be an erroneous one; nor is an erroneous decision upon the evidence an excess of jurisdiction which would enable the High Court to interfere under its general power of superintendence. 18 *W. R.* 41; 9 *B. L. R.* 417.

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* See S. 530 N. Cr. P. C. † See S. 531 N. Cr. P. C. ‡ See S. 532 N. Cr. P. C. § See S. 521 N. Cr. P. C. ¶ See S. 297 N. Cr. P. C.

OBSTRUCTION (*order to prevent*)

133. An order issued by a Magistrate under S. 62* O. Cr. P. C., in consequence of a Mahazirnama signed by certain persons, but without any notice to the defendant or enquiry by the Magistrate, is illegal. 4 *M. R. App.* 67.

134. A Magistrate has no power under S. 62 O. Cr. P. C. to issue any order which is by its very nature irrevocable. All that he has power to compel the owner of property to do is to take certain order with it. Such power does not extend to an order to cut down a large quantity of trees. 13 *W. R.* 72.

135. A Magistrate cannot, under S. 62 O. Cr. P. C., interfere with the civil right of a landholder to establish hauts within his estate, and to hold them on any day most convenient to him. 4 *W. R.* 12.

136. A Magistrate cannot pass an order under S. 62 O. Cr. P. C., without first calling on the defendant to show cause why the order should not be passed, and taking any evidence which the defendant may adduce. 14 *W. R.* 17; 5 *B. L. R. App.* 80.

137. The power of issuing orders to prevent breaches of the peace &c. conferred on a Magistrate by S. 62 O. Cr. P. C., extends only to immovable property of the description set forth in Chapter 22 of that code. 12 *W. R.* 38.

138. It is not necessary that an order issued by a Magistrate under S. 62 O. Cr. P. C., whereby a breach of the peace was prevented, should be supplemented by a proceeding under S. 318† O. Cr. P. C. 10 *W. R.* 1.

139. A Magistrate cannot pass an order under S. 62 O. Cr. P. C. directing a person to abstain from a certain act or to take certain order with certain property, unless he is satisfied that such direction on his part is likely to prevent or tends to prevent a riot or affray; nor can he pass an order under that section or under S. 282‡ or any other section of the law, calling upon a person to enter into recognizances not to collect certain cesses,—though under S. 282 the Magistrate may bind him down to keep the peace, if there is sufficient evidence to show that a breach of the peace is imminent through his acts. 14 *W. R.* 3.

140. Where a complaint was made by A that timber belonging to his master which had been cut and stacked in a certain place had been removed by B who said that the timber was cut not by A's master but by himself, and that he had stacked it in a place where he always put his timber, it was held that the Magistrate could not proceed under S. 62 O. Cr. P. C. but was bound to try the charge brought against B, and either restore the timber to A, or leave it where it was according to the result of the investigation. 15 *W. R.* 56.

141. Where a Magistrate dismissed a complaint under S. 308 § O. Cr. P. C., it was held, that it was competent for him to pass an order under S. 62 of that Code in the same case, provided he called on the defendant to show cause why S. 62 should not be applied. 12 *W. R.* 40.

142. A Magistrate or other officer exercising the powers of a Magistrate is legally competent under S. 62 O. Cr. P. C. to issue an order prohibiting a landholder from holding a haut on any particular spot on his estate on particular days, on the ground that such an order is likely to prevent a riot or an affray. 18 *W. R.* 47.

143. In a case in which the Magistrate passed an order under S. 518 N. Cr P. C. for closing a haut on the ground that it was only a mile apart from another haut, and a breach of the peace was not unlikely, the Sessions Judge recommended that the order should be set aside, S. 518 applying only when a breach of the peace was

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* See S. 518 N. Cr. P. C. † See. S. 530 N. Cr. P. C. ‡ See S. 491 N. Cr. P. C. § See S. 521 N. Cr. P. C.

imminent: Held that, under expl. II S. 518, the order could be made in all cases upon such information as satisfied the Magistrate, and as the order was one which the Magistrate had power to make and was not contrary to law, the High Court could not under S. 297 N. Cr. P. C. set it aside. 20 *W. R.* 53.

144. *Quere*—Whether a Magistrate has not power to proceed under S. 62* O.Cr. P. C. instead of under S. 308,† against a party for disobeying an order issued by him directing the party to clean a privy pronounced to be a nuisance. 17 *W.R.*57.

OPIUM (*offence relating to the smuggling of*)

145. A conviction and sentence by a F. P. Magistrate for breach of the rules for the retail sale of opium, under Reg. XXI of 1827, S. 10 annulled for want of jurisdiction as "the District Magistrate" alone was empowered to enforce the penalty. 3 *B. R.* 39.

146. The District Magistrate (whose court is the proper tribunal for the trial of an offence relating to the smuggling of opium) has, under S. 21‡ O. Cr. P. C. power to inflict any fine provided by Reg. XXI of 1827 for such offence, even though the fine may exceed Rs. 1,000. 3 *B. R.* 50; 7 *B. R.* 59; 8 *B. R.* 118; 9 *B. R.* 343.

147. The distribution of a penalty adjudged by a Magistrate under S. 26 Act XIII of 1857 is no part of his judgment, and therefore not a matter over which the High Court can exercise control under S. 404 § O. Cr. P. C.

Quere—whether a person who does not come forward in person as an informer and take the responsibilities together with the profits of his information, is entitled to any part of the penalties recovered. 16 *W. R.* 55.

ORDERS.

148. One Magistrate has no authority to set aside the order of another Magistrate. 18 *W. R.* 40.

149. In disposing of an appeal the Magistrate at first reversed the Sub Magistrate's decision and directed the release of the appellent; subsequently he recalled this order and confirmed the Sub-Magistrate's decision. Held, that the second order of the Magistrate ought to be set aside, and the original order restored. 6 *W. R. Cr.* 8.

150. On a reference by a Sessions Judge, circulars issued by a District Magistrate—forbidding all the Subordinate Magistrates from taking up cases, if they think they shall have to act under the provisons of S. 277 $ O. Cr. P. C. annulled, as beyond the competence of the District Magistrate, and based on a mis-understanding of S. 277. 3 *B. R.* 29.

151. Where a Magistrate appointed special constables under S. 17 Act V of 1861 on the ground that a murder had occured, and he was apprehensive that frequent murders would take place, it was held that his order was illegal, that section referring to cases of unlawful assembly, riot, or disturbance of the peace only; but that as the order was one of a purely executive nature, the High Court had no power to interfere with it. The Magistrate should rather have proceeded under S. 15 of the Act, and applied for sanction to an increase in the Police force. 18 *W. R.* 67.

152. The reversal of a Magistrate's order in a purely civil case, though it may deprive the petitioner of an immediate remedy, is necessary to prevent his being prejudiced in his civil remedy. 1 *W. R.* 25.

POWERS (*conferring on Magistrates*)

153. The power of a Magistrate to delegate the receiving of complaints under

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* See S. 518 N. Cr. P. C. † See S. 521 N. Cr. P. C. ‡ See. S. S. 6,7 & 8 N.Cr. P.C. § See S. 297 N. Cr. P. C. $ See S 46 N. Cr. P. C.

S. 66 *B, O. Cr. P. C. is not equivalent to the power of the local Government to invest with local jurisdiction under S. 23 + D ; and no Magistrate can act under chapter 20, who has not been legally invested with local jurisdiction.

No order of the local Government under the latter section can legally have retrospective effect. 16 *W. R.* 69.

PUBLIC SERVANTS (*obstructing—while on duty*)

154. The offence of obstructing a public servant in the discharge of his public functions is not cognizable by a Magistrate, except with the sanction or on the complaint of the Court or public servant concerned, or, if such servant is an inferior ministerial servant with the sanction or on the complaint of his official superior. *3 W. R.* 68.

RECRUITERS OF EMIGRANTS.

155. Recruiters of Emigrants charged under S. 71 Act XIII of 1864, must be tried by the Magistrate within whose jurisdiction the holding out of false pretences to the labourers took place. 4 *M. R. App.* 4.

SEIZURE (*of property*)

156. A Magistrate has no power to seize the property of a person convicted by him when the person convicted has not been directed to pay a fine. Nor has a Magistrate power to take property from one defendant and give it to another defendant. 4 *M. R. App.* 28.

SENTENCE.

ALTERATION (*of sentence*)

157. A Magistrate has no authority to vary any sentence he may have once passed on a prisoner. 3 *B. R.* 3.

158. A Magistrate is at liberty to alter his sentence at any time before the despatch of the calender to the Appellate authority. 5 *M. R. App.* 20.

FINE.

159. A Magistrate may impose a fine exceeding 1,000 rupees under the Excise Act XXI of 1856. S. 22 ‡ O. Cr. P. C. notwithstanding. 7 *W. R.* 29.

160. Held, that Where a Magistrate is dealing with a charge which he has the power to dispose of finally under Chapter 15 O. Cr. P. C. although the charge, as originally laid fell under Chapter 14 O. Cr. P. C. he has a discretion to inflict a fine under S. 270 § of that Code. 10 *W. R.* 49.

IMPRISONMENT (*for default in payment of fine*)

161. A Magistrate has no power under S. 25 Act IX of 1869 to sentence to imprisonment in default of the payment of fine imposed for not paying Income Tax. 14 *W. R.* 70.

REFERENCE OF CASES (*for severe sentence*)

162. On a reference by a District Magistrate a sentence passed by a Magistrate F. P., in a case submitted to him by a second class Subordinate Magistrate, under S. 277 $ O. Cr. P. C. annulled: as the Magistrate of the District alone had power to dispose of cases under that section. 4 *B. R.* 8.

TERM (*of sentence*)

163. A Magistrate has power to inflict only two year's imprisonment for a single offence. 1 *B. R.* 87.

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* See S. 49 N. Cr. P. C. † See S. 39 N. Cr. P. C. ‡ See S. S. 6, 7, 8, 18 & 20 N. Cr. P. C. § See S. 209 N. Cr. P. C. $ See S. 46 N. Cr. P. C.

164. A sentence of 4 years' imprisonment by a Magistrate is illegal as beyond his competency. 6 *W. R.* 90.

165. The prisoner was convicted under S. 475 P. C. and, having been previously convicted of an offence punishable under Chapter 17 of the Code, the Magistrate sentenced him to four years' rigorous imprisonment. Held, that the Magistrate had power to pass sentence of two years' imprisonment only. 6 *M. R. App.* 3.

166. Three persons were charged with five distinct offences of house breaking by night and were sentenced to two years' rigorous imprisonment in each case. Held, that the Magistrate had power only to pass sentences of four years' imprisonment upon each prisoner, but according to the sentence all the punishments inflicted would be going on simultaneously. 5 *M. R. App.* 42.

167. It is competent to a Magistrate to pass a seperate sentence in respect of each of the two charges of house-breaking in order to commit theft, and of theft in a human dwelling, of which a prisoner is found guilty, provided the aggregate punishment awarded on the two charges does not exceed the punishment which the case warrants for the greater of the two offences of which the accused has been convicted, and provided, further, such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences. 9 *B. R.* 172.

TRANSFER (*of cases for trial*)

168. S. 273 * O. Cr. P. C. authorises the Magistrate of a District or Division to transfer proceedings under Chapter 19 of that Code to his subordinates. 2 *N. W. P. R.* 401.

169. It is competent for the Magistrate of a District to refer for trial to a F. P. Magistrate a case submitted, under S. 276 † of the O. Cr. P. C., to such Magistrate of the District by a Subordinate Magistrate. 7 *B. R. A. J.* 69.

170. Held that the Magistrate of a District before whom a criminal case is brought, either on complaint preferred directly to such Magistrate, or on the report of a Police Officer, cannot, under S. 273 O. Cr. P. C. refer such case to a F. P. Magistrate. 5 *B. R.* 69.

171. S. 273. O. Cr. P. C. only empowers a Superior Magistrate, to refer cases to a Subordinate Magistrate when the complaint is made to himself or before a Police Officer, but not cases where he himself takes cognizance of an offence. 12 *W. R.* 49.

172. A case originating with a Magistrate of the District must, under S. 88 ‡ O. Cr P. C., be disposed of by the Magistrate himself, and cannot be referred to a Subordinate Magistrate. 9 *W. R.* 70.

173. A Magistrate cannot under S. 36, § O. Cr P. C. make over to any other Judicial Officer a case originally taken up by himself; but where a Magistrate has originated a proceeding in a case so for as to issue a warrant of arrest he may decline to proceed further, and may direct the injured party or a Police Officer or he may himself proceed by complaint under S. 66, before any other Magistrate having jurisdiction. He is not bound to proceed in a case in which he finds it necessary to take upon himself the office of an active prosecutor. 13 *W. R.* 1.

174. Where a case has once been made over by a Magistrate to a Deputy Magistrate for trial, the Magistrate has no jurisdiction to do any thing more in the matter so long as the transfer to the Deputy Magistrate is in existence. The Magistrate may withdraw the case under S. 36 O. Cr. P. C. from the files of the Deputy Magistrate. 12 *W. R.* 53.

175. A Magistrate has no power, under S. 273 of the O. Cr. P. C. to refer a

* See. S. 44 N. Cr. P. C. † See. S. 45 N. Cr. P. C. ‡ See. S. 174 N. Cr. P. C. § See. S. 47 N. Cr. P. C.

case of grievous hurt for trial to a Deputy Magistrate having only the powers of a Subordinate Magistrate of the second class. 6 *B. L. R. App.* 115.

176. Where a Munsiff, under the provisions of S. 19 of Act XXIII 1861, makes a matter over to a Magistrate for investigation, the Magistrate has no power to transfer to a Deputy Magistrate a case so duly sent to him. 2 *N. W. P. R.* 21; 3 *N. W. P. R.* 126.

177. Held that the Magistrate of a District to whom a case has been sent for investigation by a Civil Court has no power to refer it to a Magistrate F. P., and the latter has, therefore, under such circumstances, no jurisdiction to take up the case without complaint made to him. 4 *B. R.* 30.

178. A Magistrate cannot refer a case to a Deputy Magistrate unless he has, under S. 66 * O. Cr. P.C. reduced the examination of the complainant into writing; nor can he himself try a case once transferred to a Deputy Magistrate without formally recalling the case under S. 30. †16 *W. R.* 40.

179. Although S. 36 ‡ O. Cr. P. C. does not require a Magistrate to state his reasons for transferring a criminal case from a Court subordinate to him to his own or to any other subordinate Court, the High Court set aside an order of a Magistrate transferring a case after the subordinate Magistrate before whom it was had taken the evidence for the prosecution and had expressed an opinion unfavourable to the prosecution. 14 *W. R.* 12.

TRIAL.

Act XXXV of 1850. S. 9 (*offences under*)

180. A conviction by a F. P. Magistrate under S. 9 of the Bombay Ferries' Act, annulled for want of jurisdiction; as the "Magistrate of the Zilla" alone was empowered by S. 16 summarily to hear and determine all offences against the Act. 3 *B. R.* 11.

ACT XXIII OF 1854 (*offences under*)

181. Magistrates of all grades are, under Madras Act III of 1865, competent to try persons charged with offences under S. 26 of the Railway Act XXIII of 1854. 4 *M. R. App.* 9.

CONFINEMENT (*illegal*)

182. The offence of illegal confinement for more than 10 days is triable only by the Court of Sessions or by the Magistrate of the District, but not by a Deputy Magistrate. 7 *W. R.* 13.

DETENTION (*of accused person by Police*)

183. A Magistrate only; and not a Sessions Judge has power to try cases under S. 29 Act V of 1861. S. 152 § O. Cr. P.C. does not apply to cases in which there has not been a continuous detention of 24 hours. 1 *W. R.* 5.

ESCAPE (*from custody*)

184. A convict escaping from custody must be tried for that offence in the district within which he escaped; a Magistrate of another district has not jurisdiction to try him for the offence. 1 *B. R.* 139.

185. Prisoner, whilst under trial before the Sessions Court upon a charge framed under S. 436 P. C. (mischief by fire &c., with intent to destroy a house), was charged under S. 224 P.C. with escaping from lawful custody. The Magistrate being too late to make the latter offence the subject of another charge in the same case, made a separate commitment of the prisoner, after he had been convicted of

* See S. 140 N. Cr. P. C. † See S. 67 N. Cr. P. C. ‡ See S. 47 N. Cr. P. C. § See S. 124 N. Cr. P. C.

the former offence, for the latter offence which was one cognizable by the Magistrate. The commitment was cancelled and the Magistrate directed to deal with the case himself. 17 *W. R.* 14.

FALSE EVIDENCE.

186. The offence of intentionally giving false evidence in a judicial proceeding cannot be tried by the Magistrate before whom the false evidence is given ; this offence, being an attempt to pervert the proceedings of a Court to an improper end, is a contempt of its authority (S. S. 435, 436, 471, 472, and 473, of the N. Cr. P. C. 10 *B. R.* 73.

INDECENT GESTURES.

187. Offences coming under S. 509 P. C. are triable by the Magistrate of the District only. 7 *W. R.* 52.

RE-TRIAL.

188. Where a Sub-Magistrate discharges a person accused of an offence not being an offence specified in the 7th column of the schedule to the Criminal Procedure Code as triable by the Court of Sessions only, or by the Court of Sessions or Magistrate of the District, the District Magistrate has no power to direct a re-trial under the provisions of S. 435 * O. Cr. P. C. 9 *B. R.* 169.

ROBBERY.

189. A charge of robbery under S. 392 P C. is, under Act VIII of 1866, triable only by the Court of Session or by the Magistrate of the District, but not by a Deputy Magistrate. 7 *W. R.* 11.

FIRST CLASS MAGISTRATE (*powers of*)

APPEAL.

190. Held that the power conferred upon the Magistrate F. P. at Broach to hear appeals does not exclude the jurisdiction which the Magistrate of the District has by law, and that the proceedings in any case, in which a prisoner has appealed from the decision of a subordinate Magistrate to the District Magistrate, must be forwarded to the latter. 5 *B. R.* 8.

CONVICTION.

191. Held that a Magistrate F. P. alone has jurisdiction to convict of an offence under S. 13 of Act XIX of 1838. 5 *B. R.* 6.

192. Held that a conviction by a Magistrate, F. P., under S. 26 of the Railway Act, was illegal for want of jurisdiction. 3 *B. R.* 10.

193. On a reference by a Sessions Judge in reviewing the mothly Magisterial returns:—Held that a conviction and sentence recorded by a Magistrate F. P., under S. 50 of the Post Office Act XVII of 1854 (corresponding with S. 48 of the Act of 1866), were illegal; as the Magistrate had no jurisdiction finally to dispose of the case, but was bound to have committed it for trial before the Court of Session. 3 *B. R.* 8.

ORDER (*for maintenance*)

194. A Magistrate of the 1st class has, as such, power to pass an order under the provisions of S. 536 of the N. Cr P. C., notwithstanding he may not be empowered to take cognizance of offences without complaint.

The petitioner a resident of Cawnpore, was summoned to Allahabad to answer an application for the maintenance of his children, He was ordered to make them a monthly allowance. A somewhat similar application had been made at Cawnpore,

* See S. S. 296 & 298 N. Cr. P. C.

which was rejected on the ground of jurisdiction. Held, that the jurisdiction of the Magistrate who disposed of the case was not barred by the circumstance of the petitioner being resident at Cawnpore or of the former application having been rejected. 5 *N. W. P. R.* 237.

SUBORDINATE MAGISTRATE.

195. Held, that under the provisions of S. 23 G. * O.Cr. P. C. a Magistrate F. P. is, for the purposes of S. 434, † O. Cr. P. C. immediately subordinate to the Magistrate of the District, and not to the Court of Sessions. 6 *B. R. A. J.* 74.

TRANSFER OF CASES (*for trial*)

196. A Magistrate F.P. has no authority to refer for disposal to a Subordinate Magistrate a complaint made originally to such Full Power Magistrate. 9 *B. R.* 167.

197. Under S. 273 ‡ O. Cr. P. C. a F. P. Magistrate may refer for enquiry to a Subordinate Magistrate criminal cases that is *prima facie* any criminal case. The reference may be for enquiry or for trial by the Sub-Magistrate or with a view to commitment either to a Court of Session or the High Court. 4 *M. R. App.* 40.

TRIAL.

198. A person convicted by the Recorder's Court of Prince of Wales's Island, Singapore, and Mallaca, of the crime of burglary, and sentenced to transportation for ten years, at a place to be appointed by the Governor General of India in Council, was released from the Ratnagheri jail on a ticket-of-leave after having been in confinement for more than eight years. At Karwar he committed theft in a dwelling house before his sentence had expired: Held that the F. P. Magistrate at Karwar had jurisdiction to try the convict for the offence of violation of the condition of remission of punishment under S. 227 Penal Code. 9 *B. R.* 356.

JOINT MAGISTRATE (*powers of*)

APPEAL.

199. A Joint Magistrate vested with full powers is not, *quoad* cases instituted before and tried by him, subordinate to the Magistrate; and the latter officer has no power to quash his proceedings or to hear them on appeal. 2 *W. R.* 64.

APPOINTMENT.

200. The consent of the Governor General in Council, required by S. 5 Act XXIX of 1845, to the appointment of a Joint Judge, must be given before the appointment is made.

The doctrine of subsequent ratification does not apply in a criminal case. 1 *B. R.* 107.

COMMITMENT.

201. Legally, and for the purposes of a commitment, a Magistrate and Joint Magistrate have equal powers, and the Joint is not bound to act upon the instructions of the Magistrate in a judicial proceeding such as the commencement of a preliminary inquiry. 8 *W. R.* 61.

OBSTRUCTION (*order to prevent*)

202. Proceedings under S. 308 § O. Cr. P. C. for the removal of obstructions may be originated by a Joint Magistrate in charge of a division of a district. 15 *W. R.* 41.

REFERENCE.

203. A Joint Magistrate of a District has no power to make a reference to

* See. S. 37 N. Cr P. C. † See. S. S. 295 & 296 N. Cr. P. C. ‡ See. S. 44 N. Cr. P. C. § See. S. 521 N. Cr. P. C.

the High Court under S. 434 *O. Cr.P. C., such references can be made only by the Sessions Judge or by the Magistrate of a District. 14 *W. R.* 25.

TRIAL.

204. A Joint Magistrate of Tellicherry has no jurisdiction to try a resident of Mysore for criminal acts done in Mysore. 6 *M. R. App.* 3.

205. Where a Joint Magistrate dismissed a case in which the complainant charged the accused with illegal assembly, criminal trespass, and mischief, on the ground that the case was one completely for the Civil Court, the High Court, set aside the order, and directed the Joint Magistrate to try it. 20 *W. R.* 60.

206. A Joint Magistrate who has been vested with the full powers of a Magistrate of a District, and to whom a case is duly made over by the Magistrate, is competent under S. S. 15,†23 ‡and 68 §of the O.Cr.P.C. to institute proceedings without any formal complaint against parties other than those mentioned in the original complaint. 18 *W. R.* 43.

SECOND CLASS MAGISTRATE (*powers of*)

CONVICTION.

207. On a reference by a District Magistrate, where the conviction by a Subordinate Magistrate was for cheating; when it should have been for criminal breach of trust, for which the punishment awarded was a legal one:—Held, that there was no occasion for the Court to interfere with the conviction or sentence. 4 *B. R.* 16.

ENTERTAINMENT (*of cases*)

208. A Subordinate Magistrate, 2nd class, who is not specially vested with powers under S. 66 A $of the amended Code of Criminal Procedure has no jurisdiction to try a case on the report of a Police Officer or on a complaint directly preferred to him. 6 *B. R. A. J.* 69.

OBSTRUCTION (*order to prevent*)

209. Orders by Sub-Magistrates, in one case directing the removal of a house on the ground that it was in a dangerous and dilapidated condition, and in the other directing the removal of a granary on the ground that it had been improperly erected upon land required to be kept unoccupied for common purposes, were set aside by the High Court, because the Sub-Magistrate acted without jurisdiction. 4 *M. R. App.* 35. 5 *M. R. App.* 19.

RECOGNIZANCE.

210. A Subordinate Magistrate has no power under the provisions of the Criminal Procedure Code to take recognizances from a complainant and witnesses to appear on a certain day before a Magistrate of co-ordinate jurisdiction and recognizances thus taken cannot be forfeited. 4 *M. R. App.* 17.

211. A Subordinate Magistrate has no power to order a recognizance executed by a prosecutor before a Police Station Officer binding himself to appear before the Subordinate Magistrate to be forfeited on the failure of the prosecutor to appear. 4 *M. R. App* 18.

SENTENCE.

FINE.

212. Held that a Subordinate Magistrate has no jurisdiction to impose a penalty for breach of a rule made by Town Commissioners under Act XXVI of 1850 S. 7 cl. 5. 3 *B. R.* 36.

213. By S. 35 of the Railway Act, District Police Officers in the Presidency

* See S.S. 295 & 296 N. Cr.P.C. † Repealed by Act X of 1872 ‡ See. S. S. 20 & 42 N. Cr. P. C. § See S. 142 N. Cr. P. C. $ See S S. 23 & 25 N. Cr. P. C.

of Bombay could punish, to the extent of the powers conferred upon them, in petty offences, any offence made punishable under the Act, by fine not exceeding Rs. 20. But S. 5 of Reg. XII of 1827 (authorising the appointment of District Police Officers), and S. 41 of the same Regulation (defining the limits of their jurisdiction), being both repealed by Act XVII* of 1862 :—Held that a Subordinate Magistrate had no jurisdiction to impose a fine under S. 17 of the Railway Act. 3 *B. R.* 54.

IMPRISONMENT (*in default of payment of fine*)

214. A Subordinate Magistrate of the 1st class has no power under S. 45† O. Cr. P. C. to award any greater sentence of imprisonment in default of payment of fine, than 6 weeks in the case of persons convicted of being members of an unlawful assembly. 6 *W. R.* 51.

TRANSFER OF CASES (*for trial*)

215. A Subordinate Magistrate has no power to refer a case, which he has not himself jurisdiction to try, to a F. P. Magistrate ; and the latter has, therefore under such circumstances, no jurisdiction to take up the case without a complaint being made to him. 4 *B. R.* 34.

216. Held that a Magistrate F. P., though empowered to hear appeals, is not thereby placed in the position of the Magistrate of the District, and that, therefore Subordinate Magistrates should not refer cases, under S. 276‡ O. Cr. P. C. to such Magistrate, but to the Magistrate of the District, to whom alone they are subordinate. 5 *B. R.* 47.

217. Held that Subordinate Magistrate acted correctly under S. 277 O. Cr. P. C. in referring a case, not to the Magistrate of the District, but to the Assistant Magistrate in charge of the sub-division to which he was attached. 11 *W. R.* 7.

TRIAL.

Act XXII of 1855 (*offence under*)

218. The word "Magistrate" in S. 62 of Act XXII of 1855 includes a Subordinate Magistrate : Such Magistrate has therefore, power to try the master of a vessel for an offence committed against S. 46 of that Act. 5 *B. R.* 14.

ACT III OF 1857 (*cattle trespass Act*)

219. The repealing section of Act XVII of 1862 does not affect the power of a Subordinate Magistrate under S. 13 Act III§ of 1857. 1 *B. R.* 100.

220. By virtue of S. 21$ O. Cr.P.C. a Subordinate Magistrate of the 1st class has jurisdiction to try an offence under S. 18 of Act III of 1857, there being no provision in that Act as to the authorities by which offences committed under it are to be tried. 5 *B. R.* 13.

Act XIV of 1866 (*offence under*)

221. A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under S. 47 of the Indian Post Office Act XIV of 1866. 5 *B. R.* 36.

BREACH OF THE MUNICIPAL RULES.

222. By virtue of the last part of the schedule headed "offences against other Laws," added to the Code of Criminal Procedure by Act VIII¶ of 1869, a Subordinate Magistrate, second class, can take cognizance of the offence of a breach of the Municipal Rules promulgated under Act XXVI of 1850. 8 *B. R. A. J.* 12.

BRIBERY.

223. A Subordinate Magistrate of the 2nd class is not competent to institute

* Repealed by Act X of 1872. † See S. 309 N. Cr. P. C. ‡ See S. S. 45 & 46 N. Cr. P. C. § Repealed by Act 1 of 1871. $ See S. S. 6,7 & 8 N. Cr. P. C. ¶ Repealed by Act X of 1872.

a charge under S. 213 of the Penal Code, of accepting an illegal gratification to screen an offender. 6 *W R* 90.

DISOBEDIENCE (*of lawful order*)

224. A Subordinate Magistrate who issues a summons may take cognizance of the offence of disobedience to that summons, notwithstanding the repeal of Madras Act 1 of 1863. *M. R. App.* 52.

225. By virtue of S. S. 1 and 2 of Madras Act 1 of 1863 and the proviso in S. 273 *O. Cr. P. C. a Subordinate Magistrate is enabled to convict persons accused under S. 174 P. C. for disobedience to summonses issued by himself. 4 *M. R. App.* 51.

HURT (*causing*)

226. Where a District Magistrate annulled a conviction passed by a Subordinate Magistrate, 1st class, of voluntarily causing hurt by means of an instrument for stabbing, cutting &c., under S 324 P. C. (an offence cognizable by the Subordinate Magistrate) and directed the Subordinate Magistrate to commit the accused to the Court of Sessions for trial on the charge of voluntarily causing grievous hurt by means, &c (a charge cognizable by the Court of Sessions) :

The High Court annulled the order of the District Magistrate, and restored the conviction and sentence of the Subordinate Magistrate. 7 *B. R. A. J.* 37.

MISAPPROPRIATION.

227. A Subordinate Magistrate has no power to dismiss a charge of criminal misappropriation under S. 403 P. C. for non-appearance of the complainant under S. 259 † O. Cr. P. C. That section only applies to cases which fall within Chapter 15 of the O. Cr. P. C. 4 *M. R. App.* 41.

SPECIAL LAW (*offence under*)

228. Held that a Subordinate Magistrate of the First class has power to deal with the case of an offence provided for by a special law (in this case, Act III of 1863 B. C.) when the punishment awardable is six months' fine, and fine only ; S. 67 and not S. 65, of the Penal Code being applicable to such a case. 10 *W. R.* 30.

THEFT (*in a house*)

229. A First class Subordinate Magistrate has no jurisdiction to try a charge of theft in a house under S. 380 Penal Code. 1 *B. R.* 88.

THIRD CLASS MAGISTRATE (*powers of*)

230. A Magistrate of the third class can try a person accused of a cognizable offence, who has been forwarded to him by an officer in charge of a police station, under S. 123 N. Cr. P. C. 10 *B. R.* 70.

231. In a case referred by a District Magistrate under S. 427 ‡O.Cr.P.C. on the ground that the charge should have been under S. 324 P. C.,—an offence not within the cognizance of a second class Subordinate Magistrate ; and not under. S. 323:—

The Court passed no order, and remarked that the case should not have been referred under S. 427 O.Cr. P.C. which applies only to the Court of Sessions acting in appeal from a Court subordinate to it. 4 *B. R.* 1,2.

232. In a case referred by a District Magistrate, on the ground that the accused had been convicted, under S. 403 P. C., of dishonest misappropriation of property ; whereas the charge should have been, under S. 406 P. C. of criminal breach

* See S. 44 N. Cr. P. C. † See S. 205 N. Cr. P. C. ‡ See S. 284 N. Cr. P. C.

of trust—an offence not within the cognizance of the second class Subordinate Magistrate who passed the sentence:—The Court annulled the conviction and sentence and directed the case to be tried before a proper Court. 4 *B. R.* 3.

VILLAGE MAGISTRATE (*powers of*)

233. A Village Magistrate has no jurisdiction to impose a fine upon a person who uses abusive language to the Village Magistrate in the course of a trial under S. 10 Reg. XI of 1816. 5 *M. R. App.* 33.

OFFICER (*exercising powers under S. 1 Act XV of 1862*)

234. Held (*Jackson J. dissenting*) that an officer exercising the powers described in S. 1 Act XV of 1862, is competent, under the provisions of S. 59 P. C. to pass a sentence of transportation for seven years instead of awarding sentence of imprisonment. 9 *W. R. F. B. R.* 6.

OFFICERS (*to hold inquiries*)

235. An officer before whom, whilst acting in a particular capacity, an offence under S. 228 P. C. is committed, cannot in another capacity take up and try the offence. 12 *W. R.* 18.

236. A Sub-Registrar, who is also a Magistrate, cannot investigate a case against one of his subordinates in the Registry Office, and afterwards himself try and convict him. 14 *W. R.* 74.

237. Where a charge of theft was reported by the Police to be false. Held that the Magistrate ought first to have enquired into the charge of theft and passed some orders upon it before proceeding under S. 211 P. C. to enquire into the offence of false charge. 16 *W. R.* 67.

POLICE (*power of*)

238. S. 27 of Bombay Act VII of 1867 does not empower the Police to prohibit the use of music in private houses. 9 *B. R.* 153.

SUPERINTENDENT OF JAIL (*power of*)

239. A Superintendent of a Jail has no power under Act XXVI of 1870 to imprison for one year a night-watchman convicted before him on a charge of aiding and abetting the escape of a prisoner.

Neither had he power under Reg. XIV of 1816. 4 *N. W. P. R.* 4.

TAHSILDAR (*power of*)

240. Madras Act III of 1869 gives a Tahsildar power to issue summonses. 6 *M. R. App.* 44.

VII. KEEPING THE PEACE (PROCEDURE IN CASES OF)

BREACH OF THE PEACE.

1. The words "or to do any act that may probably occasion a breach of the peace" in S. 282 * Act XXV of 1861 were constructed to mean a wrongful act, and not one which the person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his right of property, because another person would be likely to commit a breach of the peace, if he did so. 19 *W. R.* 17.

* See S. 491 N. Cr. P. C.

BREACH OF THE PEACE (*enquiry as to*)

2. An order calling for recognizances under S. 280, * or for security under S. 281 † O. Cr. P.C. must be passed at the time deciding the original case. If no such order is then made, subsequent proceedings must be taken under S. 282 ‡ and the parties summoned to show cause. 15 *W. R.* 56.

3. A Magistrate acts without jurisdiction in making an order binding a person to keep the peace, when there is no complaint before him of a breach of the peace being likely to be committed by such person and without taking any evidence in the matter. 17 *W. R.* 35.

4. A Magistrate has no power to make an order that an accused person should enter into a bond to keep the peace until after an adjudication that it is necessary, for the preservation of the peace, to take a bond from him and until he is satisfied on that point, unless there is an admission by the party against whom the order is to be made. 11 *W. R.* 50.

5. In proceedings against persons to show cause why they should not enter into bonds to keep the peace, it is incumbent on the Magistrate to adjudicate judicially on evidence given before him as to the necessity for taking such security.

And in such cases the *onus* of proof lies upon the party on whose complaint the summons was issued. 2 *N. W. P. R.* 431 ; 5 *N. W. P. R.* 80 ; 10 *W. R.* 1 ; 12 *W R. F. B. R.* 60 ; 18 *W. R.* 2.

6. A Magistrate is not competent, under S. 282, O. Cr. P. C. to order persons to enter into bonds to keep the peace merely upon the statement of the complainant on which the summons was granted, and without taking further evidence, or giving the parties an opportunity of cross-examining the complainant. 2 *N. W. P. R.* 461.

BREACH OF THE PEACE (*evidence as to*)

7. A report of an Inspector of Police and the evidence given by the same Inspector are not sufficient to justify an order binding a person to keep the peace. 10 *W. R.* 55.

8. The High Court declined to interfere with an order passed by a Magistrate in a case in which he ordered security to be taken for the preservation of the peace, where it appeared that the evidence was sufficient to warrant the order, although such evidence was taken in the vernacular and in disregard of the provisions of S. 267 § O. Cr. P. C. 13 *W. R.* 20.

9. Order of District Magistrate, requiring certain persons to enter into recognizance and find security to keep the peace, reversed, as such order appeared to have been made without any legal evidence having been taken and recorded, as required by S. 307 $ O. Cr. P. C. 5 *B. R.* 105.

INFORMATION (*credible*)

10. The report of a Police Officer is "credible information" within S. 282 O. Cr. P. C. 10 *W. R.* 41.

11. A statement by a complainant (believed by the Magistrate) that he expected the defendant at any time to make an attempt on his person or property is credible information, within the meaning of S. 282 O. Cr. P. C. of an intended breach of the peace. 7 *W. R.* 30.

* See S. 489 N. Cr. P. C. † See S. 490 N. Cr. P. C. ‡ See S. 491 N. Cr. P. C § See S. 333 N. Cr. P. C. $ See S. 515 N. Cr. P. C.

12. A statement by a private person not upon oath or solemn affirmation, is not credible information, upon which alone a Magistrate should issue a summons under S. 282 * O. Cr. P. C.

Semble—A report by a Subordinate Magistrate of facts within his knowledge would be credible information, upon which such summons might issue, but would not be sufficient ground for a final adjudication under S. 288 †O. Cr. P. C.

In order to warrant an adjudication under S. 288, there should be a judicial investigation, and the order should be passed upon legal evidence duly taken and recorded. 6 *B. R.* 1.

13. The report of a Subordinate Magistrate is such "credible information," within the meaning of S. 282 O. Cr. P. C. as to authorize a Magistrate to summon an individual named in the report and require him to enter into a recognizance to keep the peace, although the report does not suggest that a recognizance should be required, but suggests other means for the prevention of disputes and the preservation of order. 2 *M. R.* 240.

14. The report of a Subordinate Magistrate, although it is credible information on which a Magistrate of the District would be justified, under S. 280 ‡ O. Cr. P. C. in issuing a summons, is not evidence on which he can properly arrive at a conclusion that the accused is likely to cause a breach of the peace.

S. S. 287 § and 288 of the Code require that evidence in such a case shall be recorded, and if none is forthcoming security to keep the peace should not be demanded. 8 *B. R. A. J.* 162.

15. A petition unsupported by any complaint or deposition on solemn affirmation cannot be considered "credible information" within S. 282 O. Cr. P. C. on which to warrant a Magistrate to demand security to keep the peace. 8 *W. R.* 85.

16. There is nothing in the Criminal Procedure Code which makes it imperative on a Magistrate to confront the accused and the accused in a case under S. 282 O. Cr. P. C.; and if a Magistrate considers a statement on oath of a complainant to be "credible information" under that section, there is no reason why he should not call on the accused to give security, the sufficiency of such "credible information" being ordinarily left to the Magistrate to determine. 8 *W. R.* 79.

17. Although it is competent to a Magistrate upon conviction and sentence for assault to order the accused to enter into an engagement to keep the peace, yet having omitted to do so, he can afterwards only institute proceedings under S. 281 O. Cr. P. C., upon receiving some further credible information (other than that which he derived from the previous trial), that the parties are likely to commit a breach of the peace. 3 *N. W. P. R.* 96 & 97.

18. An unproved charge of false imprisonment is not the credible information contemplated in the law, on which a Magistrate may take recognizances to keep the peace. 6 *W. R.* 1.

19. It is not necessary to call witnesses in support of an information laid before a Magistrate previous to requiring security for keeping the peace. 11 *W. R.* 6.

20. It should appear on the face of a Magistrate's order that he had received credible information that the persons ordered to enter into their recognizances were likely to commit a breach of the peace, or to do any act that might probably occasion a breach of the peace. 6 *W. R.* 93.

RECOGNIZANCE.

21. Recognizances are not necessary from persons acquitted by the Sessions Judge. 3 *W. R.* 33.

* See S. 191 N. Cr. P. C. † See S. 197 N. Cr. P. C. ‡ See. S. 489 N. Cr P. C. § See S. 496 N. Cr. P. C. ‖ See S. 490 N. Cr. P. C.

22. It is illegal and contrary to the provisions of S. 282* O. Cr. P. C., to take recognizances from one person, in order to prevent another from committing a breach of the peace. 17 *W. R.* 54.

BOND, RECOGNIZANCE (*penalty of*)

23. A Magistrate should have due regard to the circumstances of the case and the means of the parties when fixing the amount in which the sureties should be bound in a case under S. 284† O. Cr. P. C. Under the provisions of S.293‡ O.C.P.C. a Magistrate cannot direct the forfeiture of a portion of the penalty.

Where the amount of the recognizances were wholly out of proportion to the nature of the dispute, and to the means of the parties, the High Court held they could not interfere, but the Government might be moved in the matter. 19 *W. R.* 1.

24. A Magistrate cannot bind down parties to keep the peace beyond the term of their first recognizance, without proceeding as prescribed by S. 290§ O. Cr. P. C. 7 *W. R.* 26.

CONFINEMENT (*extension of period of*)

25. It is illegal and contrary to S. 290 O. Cr. P. C. to take a second recognizance before the period fixed in the first recognizance has expired. 18 *W. R.* 44; 9 *B. L. R. App.* 30.

26. Where the manager of an indigo factory is obliged to enter into recognizances to keep the peace under S. 288$ O. Cr.P.C. there is no reason, nor has the Magistrate any authority, to extend the order to the proprietor of the factory also.

The statements made by both the contending parties before the Magistrate must be regarded as evidence upon which the Magistrate may act under the said section, if he thinks it sufficient, without taking further evidence upon the subject.

There is no reason why the Magistrate, if he is satisfied that the circumstances require it, should not make an order under S. 318¶ O.Cr.P.C. as well as under S. 288.

By actual possession is meant, not possession by putting up a tent upon the land, nor merely bodily possession, but the possession of a master by his servant, or the possession of a landlord by his immediate tenant, *i, e.* the person who pays rent to him (not, as in this case, the possession of a superior landlord to whom the occupier of the land did not pay his rent), or the possession of the person who has the property in the land by the usufructuary. 18 *W. R.* 11; 9 *B. L. R.* 229.

CONVICTION (*recognizance in cases of*)

ATTEMPT TO MURDER (*recognizance in case of*)

27. The prisoner was convicted of an offence punishable under S. 307 P. C. In addition to the sentence passed upon him under that section, the Sessions Judge directed, under S. 280℘ O. Cr.P. C., that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of Rs. 100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period.

The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement. 6. *M. R.* 25.

CRIMINAL TRESPASS (*recognizance in case of*)

28. The order of the Magistrate directing the prisoner on the expiration of

* See S. 491 N. Cr. P. C. † See S. 493 N. Cr. P. C. ‡ See S. 502 N. Cr. P. C. § See S. 499 N. Cr. P. C. $ See S. 497 N. Cr. P. C. ¶ See S. 530 N. Cr. P. C. ℘ See S. 489 N. Cr. P. C.

his sentence for the offence of criminal trespass, to execute personal recognizances to keep the peace, was upheld as legal and necessary. 7 *W. R.* 14.

29. On a conviction for criminal trespass under S. 447 P. C., the Joint Magistrate added to sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in S. 489 N. Cr. P. C. for which such recognizance could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace. 20 *W. R.* 37.

30. A charge of criminal trespass and mischief was dismissed. Thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not enter into recognizances to keep the peace: Held, it was not necessary also to issue a summons to them under S. 283* O. Cr. P. C. 2 *B. L. R. App.* 28.

HOUSE TRESPASS (*recognizance in case of*)

31. A conviction of house-trespass by a Subordinate Magistrate was reversed, on appeal, by the Magistrate of the District, who, moreover, directed the Subordinate Magistrate to take a recognizance-bond in the sum of Rs. 50 from the accused, that he would not, for one year, enter the house, and would not commit a breach of the peace:—Held by the High Court that the order directing the recognizance bond to be taken should be set aside, as having been improperly made by the Magistrate in the absence of the accused, and upon the suggestion of his adversary.

Semble the order was also illegal, as not authorized by S. 280, † O. Cr. P. C. or any other section of the Code. 3 *B. R.* 1.

HURT, GRIEVOUS (*recognizance in case of*)

32. In a case in which an accused was charged with voluntarily causing grievous hurt, the Magistrate convicted him of that offence, and also ordered him to furnish recognizances to keep the peace: Held that as the Magistrate had jurisdiction under Chapter 18 O.Cr. P. C. to pass the latter order regarding recognizances, the Sessions Judge could not, on appeal, while up-holding the conviction for grievous hurt, cancel the order as to take recognizances, the evidence on the record being sufficient for that purpose. 13 *W. R.* 73.

RIOT (*recognizance in case of*)

33. It is not necessary that there should be a conviction of rioting, in order to admit of a Magistrate taking recognizances to keep the peace. 1 *W. R.* 46.

RIOT, SIMPLE ASSAULT &c. (*recognizance in cases of*)

34. S. 280 O. Cr. P.C. does not refer to offences affecting the human body, but to cases of riot, simple assault, or other breach of the peace, being an offence against public tranquillity. 4 *N. W. P. R.* 154.

35. Parties who are not stated by a Magistrate to be likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, cannot be called upon to enter into recognizances to keep the peace, simply because they did not interfere when they might have done so between the persons actually quarrelling so as to prevent a riot, their laches in this respect not bringing them within the purview of S. 282‡ O. Cr P. C. 19 *W. R.* 32.

DISCHARGE (*of recognizance*)

36. A Magistrate may, under S. 291§ O. Cr. P. C., cancel an order passed by

* See S. 492 N. Cr. P. C. † See S. 489 N. Cr. P. C. ‡ See S. 491 N. Cr. P. C. § See S. 500 N. Cr. P. C.

him under S. 282 * of that Code, summoning a person to show cause why he should not enter into a bond to keep the peace. 10 *W. R.* 40.

37. Where a Magistrate who apprehended a breach of the peace eventually discharged the recognizances which he had compelled the parties to give, it was held that he exceeded his jurisdiction when he also gave directions as to the disposition of the property in dispute between the parties. 13 *W. R.* 44.

EXECUTION (*of recognizance*)

38. A Magistrate has not power to mitigate the penalty entered in a recognizance bond. Such bond must be enforced to its full amount, unless Government forego a portion of the penalty. 1 *B. R.* 138.

39. Where a person has been bound down by recognizance not to commit a breach of the peace, the amount of the recognizance cannot be recovered from him if he is guilty of an offence, such as theft, which does not amount to a breach of the peace, or which is not likely to occasion a breach of the peace. 18 *W. R.* 63.

FORFEITURE (*of recognizance*)

40. Where the terms of a bond to keep the peace are general, the recognizances may be forfeited on any breach of the peace, whether the assault be committed against the person on whose charge the bond was originally taken or not. 15 *W. R.* 14; 6 *B. L. R. App.* 66.

41. *Quere.*—When recognizances are forfeited, is a Magistrate bound to forfeit the whole amount of the bond, and is the power of reducing the sum to a penalty corresponding to the breach of the peace confined only to the Government. 15 *W. R.* 87.

42. In a case in which proceedings are taken for forfeiture of recognizances, the person against whom they are held is competent to give evidence on oath on his own behalf. 15 *W. R.* 87.

43. There must be a regular judicial trial and legal enquiry before an order to forfeit recognizances can be passed, and the evidence taken should be recorded in the presence of the accused, or in the presence of an agent of the accused duly authorised to appear in such enquiry. 12 *W. R.* 54 ; 3 *B. L. R. App.* 155.

44. Before a recognizance can be forfeited, it must be proved that the person accused has either personally broken the peace or abetted some other person or persons in breaking it. The mere fact that the accused is a servant of one of two rival parties for whose benefit the breach took place is not sufficient. 11 *W. R.* 52.

45. A executes in District F, a recognizance to keep the peace towards B. A was afterwards convicted in District S. of having assaulted B in that District. Held, A had forfeited his recognizance and the Magistrate in District F. could proceed against him under S. 293† O. Cr. P. C. 2 *B L. R. A. J.* 11.

46. A person was bound down under recognizances to keep the peace towards all Her Magesty's Subjects for a period of one year. Some time afterwards he wrongfully confined, and extorted a sum of money from two ryots, who were supposed to have committed theft on his lands, he being for such offence fined and his recognizances forfeited. Held, that the matter ought to have ended with the fine. For the ryots not having offered any resistance, no breach of the peace took place, and the amount of the recognizances could not be taken. 19 *W. R.* 48.

47. Where A has been bound over to keep the peace under S. 281 ‡O. Cr P. C. at the instance of B, a Deputy Magistrate is not competent to order him to enter into fresh recognizances to keep the peace on account of fresh disputes with C. but should refer the case to the Court of Sessions under S. 298§ O. Cr. P. C. 15 *W. R.* 18 ; 6 *B. L. R. App.* 116.

* See S. 491 N. Cr. P. C. † See S. 502 N. Cr. P. C. ‡ See S. 490 N. Cr. P. C. § See S. 507 N. Cr. P. C.

SECURITY.

48. A Magistrate is not justified in increasing the amount of security and in demanding surities on a summons to show cause which provided only for a recognizance of much smaller amount, and made no mention of surities at all. 18 *W. R.* 61.

BREACH OF THE PEACE.

49. To justify an order under S. 491 N. Cr. P.C. calling on a person to give security to keep the peace, there must be a reasonable probability of a breach of the peace being committed, and not merely a bare possibility of a breach of the peace. 20 *W. R.* 57.

CONFINEMENT (*extension of period of*)

50. The period for which a prisoner can be bound down on security to keep the peace is one year from the date of his release from imprisonment. 6 *W. R.* 71.

51. Where a matter in respect of which further security to keep the peace is required is the same as that before the Magistrate on the first occasion, the case can only be dealt with under S. 290 * O. Cr. P. C. 7 *W. R.* 23.

52. Notwithstanding that a person has been bound down by bond to keep the peace for a stated period, a Magistrate has power, under S. 290 to increase the amount of the security required before the expiry of that period. 18 *W. R.* 58.

NOTICE.

53. Notice to shew cause why security should not be demanded must be served before a Magistrate can pass orders requiring security to keep the peace. 9 *W.R.* 16.

ORDER (*for security*)

54. An order directing a person convicted of an offence to find security to keep the peace should be simultaneous with the conviction, and should not provide for an engagement to be executed at a future period. 4 *N. W. P. R.* 154.

PENALTY (*recovery of—from surety*)

55. S. 294 † O. Cr. P. C. does not authorize the imprisonment of sureties. 4 *M. R. App.* 69.

SUMMONS.

56. An order directing certain persons to enter into recognizances of Rs. 500 each, conditioned to keep the peace for the period of one year, without first summoning them to show cause why they should not be required so to do, is irregular, and will be quashed. 2 *N. W. P. R.* 189.

57. It is essential to the validity of a summons issued under S. 281 ‡ O. Cr.P. C. that it should contain the substance of the information by which the Magistrate is moved to act. 3 *N. W. P. R.* 96 & 97; 15 *W. R.* 43.

58. A separate summons should be issued to each person required to furnish security, and a separate bond taken from each, which should be in the form required by the Code, and in the order the Magistrate should state the period for which the person against whom the order is made is to be imprisoned if he fail to comply with it. 3 *N. W. P. R.* 96 & 97.

59. In a case in which parties are summoned to show cause why they should not be bound down to keep the peace, the proceedings should be conducted with due regard to the provisions of S. S. 491 and S. 492 N. Cr. P. C. and the summons should distinctly specify the amount and nature of the security required, and the time for which the security is to run. 20 *W. R.* 36.

60. Although a Magistrate may summon a person on credible information to show cause why he should not be bound over to keep the peace, he cannot, under

* See. S. 499 N. Cr. P. C. † See. S. 503 N. Cr. P. C. ‡ See. S. 490 N. Cr. P. C.

S. 491 N. Cr. P. C. bind over such person to keep the peace until he has adjudicated on evidence produced before him by the person accused. The notice to the accused should give him sufficient time to come in to produce his evidence. 20 *W. R.* 18; 12 *W. R.* 16.

61. Before proceeding to bind parties to keep the peace, summonses should be duly issued to the witnesses, who should be examined *in the presence of the parties.* The accidental presence of any agent is not, legally speaking, such presence before which an examination is legally sufficient. 16 *W. R.* 45.

62. No security can be legally demanded from persons convicted of th eft. 7 *W. R.* 57.

VIII. LAND OR WATER (DISPUTES CONCERNING RIGHT OF USE OF)

BOUNDARIES.

1. Where the dispute is as to a common boundary between two contiguous estates, the Magistrate, instead of attaching the boundary land, should find for one party or the other, with reference to the point of possession. 4 *W. R.* 26.

BREACH OF THE PEACE.

2. The provisions of S. 318 * O. Cr. P. C. are substantially complied with when the Magistrate states that he is satisfied that the disputes between the parties was likely to induce a breach of the peace, and records his opinion that the only way of bringing those disputes to a satisfactory settlement was by proceeding under the section quoted. 8 *W. R.* 83.

3. Where a Magistrate thinks that the acts of the accused are likely to lead to a breach of the peace, and their statements as to possession of land are false, he may proceed to try whether the accused should not be charged with unlawful assembly. 9 *W. R.* 18.

4. When both the disputing parties are examined and state that men were collected by their opponents for the purpose of committing a breach of the peace, a Magistrate is justified, without enquiring who was the aggressor or the aggrieved party, to proceed under S. 318 O. Cr. P. C. and to take whatever steps are in his opinion necessary to prevent a breach of the peace. 15 *W. R.* 85.

APPLICATION.

5. Application by parties also have been found not to have been in possession, to set aside proceedings of a Magistrate under S. 318 O. Cr. P. C. which are taken in order to prevent breaches of the peace ought to be made without any delay. 19 *W. R.* 39.

CERTIFICATE (*under Act XXVII* 1860)

6. A Magistrate cannot proceed under S. 318 O. Cr. P. C. in a case of dispute arising out of a right of succession to a muth and its appurtenances, but should apply to the Judge under the provisions of Act XIX of 1841 to appoint a curator, or make some order with regard to the property, till the right of succession is determined. The grant of a certificate under Act XXVII of 1860 does not decide the title to such land. 11 *W. R.* 23 ; 2 *B. L. R. A. J.* 27.

7. A certificate under Act XXVII of 1860 simply empowers the person to whom it is granted, to demand and receive the debts due to the deceased, and is in no way a determination of a competent Civil Court of the right of such person to possession of land under attachment under S. 319 † O. Cr. P. C. 9. *W. R.* 18.

* See S. 530 N. Cr. P. C. † See S. 531 N. Cr. P. C.

ENQUIRY (*as to breach of the peace.*)

8. The enquiry contemplated by Chapter 22 of the O. Cr. P. C. is a personal enquiry before the Magistrate who makes the order. 4 *M. R. App.* 20.

9. To satisfy the requirements of S. 318 O. Cr. P. C. a Magistrate must himself enquire into the likelihood of a breach of the peace happening, and must come to a judicial decision upon it; and in conducting the subsequent investigation he must *examine* the witnesses whom the parties have tendered. 9 *W. R.* 64; 6 *M. R. App.* 4; 18 *W. R.* 4.

10. In a case under S. 318 O. Cr. P. C. a Magistrate need not summon witnesses, but may proceed on investigations conducted by the District Police if he considers that they show that a breach of the peace is likely to occur. 11 *W. R.* 36.

11. Although there is no provision in Chapter XXII of the O. Cr. P. C. for the summoning of witnesses, it is the duty of a Court in cases of breach of the peace under S. 318, if the parties cannot produce their witnesses, to issue summonses for their attendance. 18 *W. R.* 64.

12. A mere local enquiry and statements of parties not on oath are not sufficient data on which a Magistrate can decide under S. 318 O. Cr. P. C., what party is in possession of land with regard to which a breach of the peace is apprehended. 16 *W. R.* 13.

13. No enquiry should be made nor order giving possession to one side or the other passed under S. 318 O. Cr. P. C. save on the supposition that the dispute is likely to cause a breach of the peace. 2 *W. R.* 44.

14. Two investigations under S. 318 O. Cr. P. C. were before a Magistrate who, after deciding one of the cases, remarked on the other that, because the land adjoined, he had taken the evidence in the two cases together and found it unnecessary to continue the enquiry further. Held under S. 404 *O.Cr.P.C. that the parties kept out of possession were entitled to a full enquiry. 8 *W. R.* 63.

15. When an application has been made to the Magistrate for the removal of a wall under S.S. 308 † and 320 ‡O.Cr. P.C. as affecting the public convenience. the High Court will not compel the Magistrate to proceed under S. 320 upon a different ground, namely, to enquire whether the land on which the wall was built was open to the use of the complainant's people. 5 *W. R.* 66.

16. The Deputy Magistrate's order awarding absolute possession of the land to the plaintiff, was quashed (1) because the Deputy Magistrate was bound under S. 318 O. Cr. P. C. to enquire into the fact of possession and decide accordingly, and according to his own statement the possession was found in the defendant; and (2) because the plaintiff claimed only a right way over the land and not possession of it. 1 *W. R.* 25.

EVIDENCE (*as to breach of the peace*)

17. When the party summoned shows cause, the Magistrate in taking evidence should look not merely to the question of possession, but also whether he is satisfied that there was a probability of a breach of the peace. 15 *W. R.* 44.

18. Before instituting proceedings under S. 318 O. Cr. P. C. a Magistrate must satisfy himself on legal evidence that there exists a likelihood of a breach of the peace and also record a proceeding stating the grounds of his being so satisfied. 16. *W. R.* 64.

19. In a proceeding under S. 318 O. Cr. P. C. the finding of the Magistrate that he believes that a dispute exists likely to induce a breach of the peace must depend upon *legal* evidence in the case which he is investigating. A Police report is *per se* no legal evidence in such a case. 15 *W. R.* 42; 16 *W.R.* 17; 6 *B.L.R. App.* 151.

* See S. 297 N. Cr. P. C. † See S. 521 N. Cr. P. C. ‡ See S. 532 N. Cr. P. C.

20. In a case of dispute regarding land between A and B (the latter a resident of another district), a Deputy Magistrate, on the report of the Police that there were serious apprehensions of a breach of the peace, summoned not only A and the servants of B; but also B; and without taking any evidence against B, found him guilty with the rest, under S. 497, N. Cr. P. C. and directed him to enter into a bond and to find security to keep the peace. Held, that the order as regards B was illegal: it was accordingly set aside. 20 *W. R.* 68.

21. When in a case under S. 318 * O. Cr. P. C., a Magistrate has taken any evidence, he is not justified in refusing to proceed with the case because the parties neglected to file written statements on the day fixed for filing the statements 11 *W. R.* 9.

INFORMATION (*of breach of the peace*)

22. In a case of disputes concerning the possession of land under S. 318 O. Cr. P. C. the Magistrate has no jurisdiction to interfere unless he is first satisfied of the existence of a dispute likely to cause a breach of the peace. 5 *W. R. F. B.* R. 64.

23. Held that it would be highly technical and unnecessary to interfere with a Magistrate's order under S. 318 O. Cr. P. C. on the ground that the Magistrate had not formally stated that he was satisfied that a dispute likely to induce a breach of the peace existed, when obviously the Magistrate had information of that kind before him. 6 *W. R.* 4.

24. Under the provisions of S. 318 O. Cr. P. C., the Magistrate should specify the nature of the information received by him, and state the principal facts which by the exercise of a judicial discretion he derives therefrom, and which in his judgment constitute grounds for believing that a dispute concerning certain land exists which is likely to induce a breach of the peace; and the roobokaree which S. 318 prescribes should plainly set out, without reference to any other documents at all, the actual facts which constituted the ground for such belief on the part of the Magistrate. 19 *W. R.* 10.

EJECTMENT.

25. On a charge of forcible ejectment, a Magistrate has nothing to do with the rights of the parties to the land. 7 *W. R.* 12.

NOTICE.

26. There is nothing in the law which enjoins the serving of notice upon all the co sharers in an estate which may in some shape or other form the subject of a litigation under S. 318 O. Cr. P. C. The only parties entitled to notice are those concerned in the dispute which is likely to induce a breach of the peace. 18 *W. R.* 54.

27. The mere service of a notice upon a mofussil *naib* who takes no steps whatever to consult his employer or act under her directions, is not such a notice as is contemplated by S. 318 O. Cr. P. C. in a case of dispute regarding possession of land. 17 *W. R.* 9.

28. Prompt action is generally requisite in cases of dangerous disputes regarding the possession of land. 6 *W. R.* 4.

POSSESSION.

29. The actual possession intended by Chapter 22 O. Cr. P. C. does not include the occupancy of a mere trespasser. 6 *M. R. App.* 13.

30. It is a misconception of the aim and object of the law as well as a waste of time to the Court and of money to the parties, to come up to the Court under S. 318 O. Cr. P. C., with questions of title to possession of land, which can only be settled in a Civil Court. 17 *W. R.* 3.

* See S. 530 N. Cr. P. C.

31. In a case of disputed possession likely to lead to a breach of the peace, the Magistrate, instead of merely binding down the parties to keep the peace, and declining to interfere further, is bound to dispose of the question of possession under S. 318. *O.Cr. P. C. 4 *W. R.* 12.

DEFENCE (*right of—in land dispute*)

32. Where A is in actual peaceable possession of land, B's attempt to recover possession of it by force is an illegal act which A has a right to resist. If B uses force in carrying out his attempt, A has a right to oppose force to force to inflict upon B such injury as is necessary to compel him to desist. 7 *W. R.* 112.

33. A Magistrate cannot, under S. 318 O. Cr. P.C., decide as to the respective claims or rights to actual possession nor act upon former decisions to prove previous title or possession. All that he has to do is to find which party is in actual possession. 7 *W. R.* 26. ; 17 *W.R* 59.

ENQUIRY (*into the fact of possession*)

34. A Magistrate, under S. 318 O. Cr. P. C. is to enquire into the question who is in actual possession of the property in dispute, without considering how that possession has been obtained. 6 *B. R. A. J.* 30.

35. In proceedings under Chapter XX O. Cr. P. C., a Magistrate should not hold a lengthened and protracted investigation, but should make a speedy and summary enquiry into the fact of possession, and pass, with as little delay as possible, an order declaring the party whom he finds in possession entitled to retain it until ousted by due course of law. 11 *W. R.* 36.

36. In investigating a case of dispute as to land between two parties under c. 22 O. Cr. P. C., a Magistrate found that one party was in possession, but there being a charge against both parties of rioting under S. 147 P. C., he punished both parties. Held that the party in possession were protected by S. 104 P. C. in maintaining their possession, and the punishment inflicted on them was accordingly remitted. 10 *W. R.* 64.

37. A Magistrate has a discretion whether he will interfere in a case of a dispute relating to the possession of land under S. 320 †O. Cr. P. C. The complainant must make out a sufficient case for the summary interference of the Magistrate under that section. 11 *W. R.* 3.

38. Where complainant applies to be restored to possession under S. 318 O. Cr. P. C., the question of possession will require determination. 2 *N. W. P. R.* 82 ; 2 *W. R.* 31; 6 *W. R.* 50.

39. In a case of disputed possession of land under S. 318 O. Cr. P. C.,—Held that the Magistrate was wrong in not recording a sufficient proceeding showing the grounds upon which he was satisfied that the dispute was one likely to lead to a breach of the peace ; and that, if the parties consented to waive that point by consenting to go into the whole question, the Magistrate was wrong in taking the title of one person as *prima facie* evidence of his possession, and throwing the *onus* on the other, and precluding that other from proving his title. 6 *W. R.* 61.

40. The order of a Deputy Magistrate in a preliminary proceeding under S. 318 O. Cr. P. C., requiring both parties to produce "a written statement of their respective *claims to the share in dispute*", was held to mean that the parties were to file their statement in respect of their *claims to possession* ; and the Deputy Magistrate having subsequently retained in possession the person whom he found in possession, his proceeding was considered sufficient, notwithstanding that the order passed by him was adverse to an absent co-sharer. 18 *W.* R. 24.

EVIDENCE (*as to possession*)

41. The possession regarding which parties are required to give proof in a

* See S. 530 N. Cr. P. C. † See S. 532 N.Cr.P.C.

case under S. 530 Act X of 1872 relating to a dispute for land in respect of which a breach of the peace is apprehended, is possession at the time the proceedings are instituted by the Magistrate, and not possession at the time the Magistrate comes to his decision. 20 *W. R.* 51.

42. The ruling of a Civil Court that a plaintiff in a certain case had alleged title and undisputed possession, but had in no way proved that allegation, is not such an order as would justify a Magistrate, under S. 318 * O. Cr P. C., in putting him out of possession in favor of another party. 11 *W. R.* 43.

43. Where a Magistrate proceeding under S. 318 O. Cr. P. C., decides on the evidence in favor of a party as being in possession of the disputed land, the High Court cannot re-consider the Magistrates' decision and decide which party is in actual possession. 15 *W. R.* 86.

44. In a dispute for possession of land under S. 530 Act X of 1872, the written report of an Ameen who was deputed to hold a local enquiry is not sufficient by itself to justify an order retaining a party in possession until ousted by due course of law. 20 *W. R.* 57.

45, In order to give a Magistrate jurisdiction to make an order regarding the possession of land under S. 318, he must be satisfied that there exists a dispute likely to induce a breach of the peace, and he must record the grounds of his being so satisfied, It is not sufficient that there is a mere scintilla of evidence, but there must be some evidence from which the Magistrate may reasonably draw the necessary conclusion of fact. The question whether any such evidence existed is one for the consideration of the High Court, 4 *M. R. App.* 49,

LAND DISPUTES (*power of Magistrate in cases of*)

46. S. 320 † O. Cr. P. C. gives special jurisdiction to Magistrates with full powers, and, in cases provided for by it, the general power given to any Magistrate by S. 62 ‡O. Cr. P. C. is barred. 3 *M. R. App.* 23.

47. A Magistrate is quite justified in preventing a person from entering upon land in the possession of another. 3 *W. R.* 19.

48. In a dispute concerning land, the Magistrate having found one party to be in possession, had no power to give the opposite party found not to be in possession, permission to cultivate the disputed land pending the decision of any possessory action he might bring under S. 15 §Act XIV of 1859, 18 *W. R.* . 27.

49. The power of attaching land regarding which there is a dispute conferred on a Magistrate by S. 318 O. Cr. P. C., extends to disputes as to possession of land of which rival zemindars are in possession by their ryots. 15 *W. R.* 1.

50. There are no "general powers" in any law which authorize a Magistrate to issue orders, directing that a party shall be kept in peaceable possession of land. Such orders were therefore, cancelled as without warrant of law, the procedure prescribed in S. 318 O. Cr. P. C. not having been observed. 9 *W. R.* 20.

51. S. 318 O, Cr. P. C. refers only to disputes concerning land, but not to a dispute as to the right to collect the rents of a joint undivided estate in a certain proportion. The latter must be dealt with under S. 26 Reg. V of 1812, as amended by Reg. V of 1827. 18 *W. R.* 36.

52. S. 320 O. Cr. P. C. is not intended to provide a substitute for a civil suit to declare the rights of the parties, but only empowers the Magistrate to order that possession shall not be taken by any party to the exclusion of the public, until the party claiming possession obtain a decree for exclusive possession. 6 *W. R.* 74.

* See S. 530 N. Cr. P. C. † See S. 532 N. Cr. P. C. ‡ See S. 518 N. Cr. P. C.
§ Repealed by Act IX of 1871.

53. A Magistrate ought not to interfere, under S. 318 * O. Cr. P. C., with the execution of a decree of the Civil Court. If called in to interfere at all because he is apprehensive of a breach of the peace, he should, under S. 319 † O. Cr. P. C. maintain in possession the person who has been actually put in possession by a decree of the Civil Court. 6 *W. R.* 10.

54. The purchaser of an interest in land at a sale in execution of decree obtained an order for possession under S. 263 or 264 Act VIII of 1859, and a dispute arose between him and another person who had some interest in the land, as to what passed under the sale certificate. Without ascertaining the rights of the parties, the Magistrate made certain orders, the effect of which was to exclude the auction-purchaser for some time from exercising the right alleged to have passed to him under the purchase. Held that the Magistrate ought to have made no order at all with reference to the property, leaving it to the parties to determine their rights in the Civil Court, and that he had ample power under the section to do what was necessary to prevent a breach of the peace.

The High Court may interfere with and quash an order passed by a Magistrate under S. 62 ‡ O. Cr.P.C. when the order is such that it was beyond the power and out of the jurisdiction of the Magistrate to make it.

Quere—Whether pleaders have a right to be heard in such cases. 17 *W. R.* 37.

55. A Magistrate has jurisdiction, under S. 318 O. Cr. P. C., to prevent breaches of the peace in places where the rivers have dried up. The jurisdiction that was once there under S. 30 § O. Cr. P. C. is not taken away by reason of the land having appeared and the water disappeared.

It is not competent to a party who, when there is no clear evidence of actual possession, puts in certain documents which would be evidence of title and invites the Magistrate to consider them as bearing upon the fact of possession, to object afterwards that the Magistrate has gone into the question of title.

When a Magistrate is not satisfied that either of the contending parties was in actual possession, his proper course is to attach the property, and not give either party what might be supposed to be the advantage of a finding on his part that there was possession.

Where a Magistrate made an order under S. 318 without previously recording a proceeding, his order was annulled, and the case sent back to him that he may proceed under the section. 17 *W. R.* 53.

LAND DISPUTE (*power of Sessions Judge in case of*)

56. A Sessions Judge has no power to interfere with an order of a Magistrate attaching disputed land under S. 319 O. Cr. P. C. 15 *W. R.* 1.

PROCEDURE (*in case of disputed possession of land*)

57. Before passing an order in a case of disputed possession of land &c. the procedure enjoined by S. 318 O. Cr. P. C. should be carried out 3 *W. R.* 9.

PROCEEDINGS (*in case of land dispute*)

58. The omission of a Magistrate to record a proceeding in a case of disputed possession of land is not a mere informality in procedure, but renders the whole of the Magistrate's proceedings illegal. 4 *W. R.* 26.

59. It is not necessary that the proceeding required by S. 318 O. Cr. P. C. should be recorded in a particular form or on a separate sheet : it is sufficient if it be recorded. 10 *W. R.* 16.

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* See S.530 N. Cr. P. C. † See S. 531 N. Cr. P. C. ‡ See S. 518 N. Cr. P. C. § See S. 67 N. Cr. P. C.

WATER. (*use of*)

60. In deciding a dispute as to a right of water, the Magistrate must follow strictly the course pointed out by chapter 22 O. Cr. P. C. 7 *W. R.* 45.

61. Where two parties have a dispute before a Magistrate as to the right to the use of water which the party complained against had embanked, the Magistrate should proceed under chapter 22, and not as for a nuisance under chapter XX of the O. Cr. P. C. 13 *W. R.* 51.

WAY (*right of*)

62. Right of way is a right of use of land within the meaning of S. 320 * O. Cr. P.C. 4 *M. R. App.* 12.

63. 62 O. Cr. P. C. does not apply to a private dispute between two parties relative to a path. 19 *W. R.* 6.

64. A Magistrate is bound under S. 320 O. Cr. P. C. to investigate a case in which the complainant alleged that his right of way had been interfered with, and ought not to refer the complainant to the Civil Court. 14 *W. R.* 28.

65. Although a road may be a private one, a Deputy Magistrate has jurisdiction to make an order under S. 308 †O. Cr. P. C. if it appears that S. 320 applies to it, that is, if it is open to the use of a certain class of persons who used it a few days before the occurrence of the dispute. 19. *W. R.* 33.

66. In a case of dispute concerning a right ofway, the Magistrate, instead of deciding against the complainant on the ground that he already has another way of approach to his own house, ought to enquire whether or not the new road has been in the use and occupation of the complainant, and, if so, to retain him in it, leaving the owner of the land to determine the question of right to the easement in the Civil Court.

S. 320 O. Cr. P.C. does not require that there should be an apprehended breach of the peace before the authorities can interfere to decide a right of way. 2 *W. R.* 64.

67. Where land is acquired by Government for public purposes under Act VI of 1857, the title of Government to the land is absolute, and the public have no right of way over it. 14 *W. R.* 72.

IX. LUNATICS.

1. Course to be pursued when on the trial of a prisoner the Court may entertain doubts as to his sanity. 1 *B. R.* 33; 1 *W. R.* 1.

2. The absence of all motives for a crime when corroborated by independent evidence of the prisoner's previous insanity is not without weight. 1 *W. R.* 19.

3. A prisoner, who is insane and unaccountable for his actions, and therefore incapable of making his defence instead of being tried, should be dealt with according to S. S. 389 ‡ and 390 § O. Cr. P.C. 1 *W. R.* 11; 3 *W. R.* 57.

4. When a prisoner is found to be insane at the time of his trial, the proper procedure applicable to his case is that prescribed by S. S. 391 $ and 392 ¶ O.C.P.C. 9 *W. R.* 23.

5. Where an accused person was found after examination to be of unsound mind,—Held, that the Magistrate should not have proceeded to acquit the prisoner and directed him to be kept in custody, but shuld have stayed further proceedings 6 *W.R.* 54

*See. S. 532 N. Cr P. C. † See. S. 521 N. Cr.P. C. ‡ See. S. 425 N. Cr. P. C. § See S. 426 N. Cr. P. C. $ See S. 427 N. Cr. P. C. ¶ See S. 428 N. Cr. P. C.

6. Where a prisoner was declared by the Civil Surgeon to be insane at the time he was called on to make his defence, it was held that it was irregular to acquit him. Proceedings should have been stayed and the prisoner detained, pending the orders of Government. 10 *W. R.* 37.

7. A Magistrate rightly commits for trial at the Sessions a prisoner charged with murder, whom he finds to be sane at the time of the preliminary investigation, although he was insane when he committed the act. 9 *W. R.* 23.

8. Where a Magistrate has kept in custody an insane prisoner and reported the case to Government, his successor, instead of striking off the case, is bound to resume the investigation under S. 391 O. Cr. P. C. 6 *W. R.* 3.

9. The fact of unsoundness of mind is one which must be clearly and distinctly proved, before any jury is justified in returning a verdict under S. 84 P. C. 20 *W. R.* 70.

10. Held, having regard to the provisions of S. S. 232 and 425 N. Cr. P. C. that where an accused person at his trial appears to the Sessions Judge to be of unsound mind, the trial of the issue of insanity is part of the trial of the accused, and ought to be tried by the Jury, and not by the Sessions Judge personally. 19 *W. R.* 15.

11. A Sessions Judge in his charge to the jury told them that in his judgment the accused was at the time of his trial exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was insane at the time he committed the offence. Held that the issue as to whether the accused was of unsound mind at the time of the trial and incapable of properly making his defence was a preliminary issue to that put by the Sessions Judge, and should under S. 425 N. Cr. P. C. have been first submitted to the jury. 19 W. R. 26.

12. The prisoner was convicted of murder and sentenced to death. But before confirming the sentence, as doubts were entertained of her sanity, the case was referred to the Sessions Judge with instructions for further enquiry. 2 W.R. 33.

13. Case in which the prisoner, notwithstanding that he had been convicted by the Sessions Judge, was acquitted by the High Court on the ground of insanity under S. 393 * O. Cr. P. C. and directed to be kept in safe custody, pending the orders of the Local Government to be applied for by the Judge. 7 *W. R.* 42.

14. On the acquittal of an accused person on the ground of insanity, the Court should proceed under S. 394 † O. Cr. P. C. and report the case to Government. 1 *W. R.* 15.

X. MAINTENANCE.

CHILDREN (*maintenance of*)

1. No order can be passed under S. 316 ‡ O. Cr. P. C, for the maintenance of an unborn child. 3 *N. W. P. R.* 70.

2. An order made under S. 316 O. Cr. P. C., fixing a sum for the maintenance of a child, containing a prospective order for an increase of the amount awarded as the child grows older, is unauthorized by the law. 2 *N. W. P. R.* 454.

3. Where the Magistrate, under S. 316 O. Cr.P.C. ordered a person to make a monthly allowance for the support of an illegitimate child: Held by the majority of the Court (*Markby J. dissenting*) that there was no conviction of an offence, and that consequently no appeal lay. 7 *W. R.* 10.

4. The circumstances that the father of an illegitimate child is 16 years old

* See S. 429 N. Cr. P. C. † See S. 430 N. Cr. P. C. ‡ See S. 536 N. Cr. P. C.

only, and still studying at school, is not by itself a sufficient reason for holding him excused from the necessity of providing for his illegitimate offspring.

The law requires that the person on whom the orders of maintenance is issued must have sufficient means to support the child. 4 *N. W. P. R.* 123.

IMPRISONMENT (*in case of maintenance*)

5. The issue of a warrant under S. 316 O. Cr. P. C., is permissible for every breach of an order of maintenance made under that section, but there seems no ground for saying that a defendant can get out of his ability for any payment by the failure to issue a warrant for the levy of that payment. The result of issuing it for an aggregate of payments is that one month's imprisonment would alone be awardable in default. 6 *M. R. App.* 23.

ORDER (*of maintenance*)

6. An order made by a Magistrate under S. 316 O. Cr. P. C. must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case. 8 *W. R.* 67.

7. An order of maintenance, under S. 316 * O. C. P. C., is a "judicial proceeding of a criminal court" within the meaning to S. 404 of that code, but no appeal lies against such order under S. 409.† 5 *B. R.* 81.

8. An order for maintenance having been made, under S. 531 Act X of 1872, the plaintiff applied to have the order enforced. The defendant being called on to show cause why the order should not be enforced, divorced his wife (the plaintiff) in the presence of the Court;—Held that, even if such divorce made such an alteration in the circumstance as to justify the Court, on the application of the husband (the defendant), in altering the order for maintenance, yet the defendant would not be relieved from obeying the order during the time which had elapsed up to the date when and until that change of circumstances had occurred. 19 *W. R.* 73.

9. The proceedings of a Magistrate awarding the payment of a certain sum of money per mensem for maintenance with reference to the means of the husband were held to be legal. If the husband is aggrieved, he ought to apply to the Magistrate under S. 317 ‡O. Cr. P. C. 9 *W. R.* 1.

WIFE (*maintenance of*)

10. An order made by a Magistrate under Act XLVIII of 1860 (Police Amendment Act) S. 10, directing a Mahommdan husband to pay a sum monthly for the maintenance of his wife, does not deprive such husband of his inherent right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced. 8 *B. R. O. J.* 95.

11. The inability of a husband and wife to agree to live together, is no ground for decreeing a separate maintenance to the wife. 6 *W. R.* 59.

12. It is open to a husband upon whom an order to make an allowance for the maintenance of his wife has been made, under S. 316 O. Cr. P. C., after such order has been made, to prove that his wife is living in adultery, and upon such proof a Magistrate is justified in cancelling an order made under the above section. 8 *B. R. A. J.* 124

13. Where the Magistrate's order directed the defendant to pay a monthly sum for the maintenance of his wife, and directed that the defendant be rigorously imprisoned for the term of 15 days for every breach of the order under S. 316 O. Cr. P. C. the High Court quashed the latter part of the order as being irregular and bad in substance. 5 *M. R. App.* 34.

14. A woman of the Jat caste applied under S. 316 O. Cr. P. C. for an order

* See S. 297 N. Cr. P.C. † See S. S. 267 & 269 N.Cr.P.C. ‡ See S. 537 N. Cr.P.C.

of maintenance. As she had only gone through the ceremony of "Karao" with her alleged husband, the Joint Magistrate rejected her application. His order was set aside, in reference, a "Karao" marriage among the Jats being held valid, and the offspring of such unions being entitled to inherit. 4 *N. W. P. R.* 128.

15. The rejection of an application for maintenance made by the wife of a Christian who had reverted to Hinduism and married a second wife is not warranted by the decision reported in 3 M. R. 7. 4 *M. R. App.* 3.

16. A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot conclude either the woman from applying, or a Magistrate from making an order, under S. 316 O. Cr. P. C. for the maintenance of their illegitimate daughter. 17 *W. R.* 49.

WIFE AND CHILDREN (*maintenance of*)

17. Before an order under S. 316 O. Cr. P. C, for the maintenance of a wife or children can be passed against a person, the charge must be legally proved against him, the words "due proof" in that section meaning legal proof on oath. 13 *W. R.* 19.

18. Where a Criminal Court ordered a husband to pay a sum of money monthly towards the maintenance of his wife and children, and a Civil Court subsequently, on the suit of the husband for restitution of conjugal rights, gave the husband a decree; it was held that the order of the Criminal Court ceased to have any effect from the date of the decree of the Civil Court. 13 *W. R.* 52.

19. The Deputy Magistrate's order in this case was quashed as illegal, he having held that the wife was not entitled to maintenance under S. 316 and yet, without evidence of the husband's unwillingness but the contrary to support his infant children, directed him to pay her a monthly sum as maintenance for the children. 16 *W. R.* 62.

XI. MISCELLANEOUS.

AMENDMENT.

1. Semble—the latter part of S. 41 Act XVIII of 1862, only gives power to amend where the defect is formal. 1 *M. R.* 31.

ATTACHMENT.

2. An attachment of land under S. 3 Act IV of 1840, can only be withdrawn by the officer who attached the property. 2 *W. R.* 33.

COMMENTS.

3. Comments by a Magistrate F. P. on the proceedings of the Sessions Court, disapproved of. 5 *B. R.* 15.

CUSTODY.

4. A person in custody from his inability to give security is not in custody for an offence with which he has been charged or of which he has been convicted. 3 *M. R. App.* 23.

DUTY (*transit*)

5. Held, that it was beyond the power of a Collector to issue an order prohibiting the receiving of transit duties for the Holkar's Government in British territory. 5 *B. R.* 13.

ENQUIRY.

6. Taking the statements of both parties without recording evidence in proof of either is not an "enquiry." 2 *W. R.* 44.

7. A charge of trespass involves an offence under the Penal Code which a Ma-

gistrate is bound to enquire into by taking evidence and deciding the case according to law. 18 *W. R.* 14.

8. Where the Sub-Magistrate dismissed a charge of theft without enquiry, held that the District Magistrate might institute a fresh enquiry into the complaint. 5 *M. R. App.* 31.

9. Where the accused was charged with breach of S. 77 Act III of 1864 in not taking out a licence for a woodyard, and he pleaded that the yard had been in existence prior to 1864, it was held that the Magistrate was wrong in refusing to enquire into the allegation as to the existence of the yard prior to 1864. 15 *W. R.* 84.

ERRORS (*of procedure*)

10. The error of a Deputy Magistrate in proceeding by warrant instead of by summons, furnishes no ground for quashing his proceedings. 1 *W. R.* 16.

11. In a case in which the accused was charged under sections of the Penal Code of an offence which was committed before the Penal Code came into operation, it was held that, having regard to S. 4 Act XVII of 1862. and S. 426 * O. Cr. P. C. the error of procedure was not sufficient to vitiate the conviction so long as the punishment awarded as under the Penal Code did not exceed that which was the legal penalty for the offence before the Penal Code became law. 15 *W. R.* 48.

EXPENSES (*of complainants and witnesses*)

12. An order directing the payment to a witness of a portion of the amount of fine levied on an accused held to be illegal, in the absence of proof that the witness suffered any loss owing to the conduct of the accused. 9 *W. R.* 58.

IRREGULARITY.

13. An order of fine quashed as made without the answers of the parties fined being taken to the offence charged. 2 *W. R.* 58.

14 A reference to proceedings in a former case declared to be irregular. 6 *W. R.* 2.

15. Conviction of prisoners in two separate cases upon the evidence recorded in another case and without taking their defence, quashed as illegal, with a direction to the Deputy Magistrate to avoid making remarks in his proceedings calculated to foster bad feelings between planter and ryot. 1 *W. R* 36.

16. It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner.

It is also an irregularity to prepare the charge against a prisoner after his defence has been recorded. 3 *N. W. P. R.* 271.

17. Where an accused person was arrested as an absconded offender, and without evidence being gone into on that charge an enquiry was made into his mode of livelihood, without any summons being issued under S. 306. †O. Cr. P. C, such proceedings were held to be irregular. 3 *N. W. P. R.* 2.

18. The not examining a complainant and not reducing his examination into writing is not such an irregularity as to require the interference of the High Court in a trivial case, unless it appears probable (of which there was no suggestion in the present case) that a fresh investigation would produce a different result. 17 *W. R.* 37.

19. The Court declined to set aside the preliminary proceedings before the Magistrate, because, though there might have been some irregularity in them, they had not been objected to by the parties notwithstanding that they had had full opportunity of doing so.

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* See S. 283 N. Cr. P. C. † See S. 515 N.Cr. P.C.

The decision 12 W. R. 49* does not apply to a case where a regular charge was subsequently drawn up giving the prisoner full information of the offence which it was intended to prove, still less to an ordinary Sessions case, where the regularity of the preliminary proceeding is not in question under the plea of not guilty. 17 *W. R.* 35.

20. The proceedings before a Magistrate preliminary to commitment are not impeachable for irregularity, because some of the depositions were taken before the accused persons were brought before him. 17 *W. R.* 15.

21. A sentence of imprisonment by the Magistrate was quashed as against those prisoners who were not present and had not been heard in their defence. 7 *W. R.* 45 ; 8 *W. R.* 17.

22. A conviction and sentence for criminal breach of trust as a public servant, reversed, owing to irregularities in the preliminary inquiries, and irregular procedure as to the examination of the prisoner in the Court of Sessions. 3 *B. R.* 51.

23. Conviction and sentence for an offence under a stamp Act reversed on a reference by a Sessions Judge ; as the proceedings of the Magistrate who tried the case were highly irregular. 3 *B. R.* 34.

IRREGULARITY (*does not vitiate proceedings*)

24. That a Magistrate has acted without proper discretion in ordering a prosecution is no ground for reversing his order. 9 *W. R.* 18.

JUVENILE OFFENDER.

25. Under Act VI of 1864 (the Whipping Act) a juvenile offender means a person under the age of sixteen years. 8 *B. R. A. J.* 9.

LIMITATION.

26. The special limitation of the period for prosecution (three years) in cases of treason and misprison of treason under stat. 7, W. M. III. c. 3, S. 5, is an exception to the general rule in criminal cases ; and in enacting S. 121 P. C. the Legislature has not thought fit to limit in any way the period within which a prosecution for an offence against that enactment may be commenced, and consequently such limitation does not form part of the Penal Code. 15 *W. R.* 25 ; 7 *B. L. R.* 63.

MAGISTRATES (*duty of*)

27. A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accused, but should determine his guilt or innocence upon the evidence given in the case. 7 *B. R. A. J.* 50.

28. It is the duty of the Police and the Magistrate not only to bring the parties suspected of being guilty to trial, but also to ascertain whether the suspected can clear themselves from the crime of which they are accused. 14 *W. R.* 16.

29. If a complaint is duly made before a Magistrate, and the act imputed appears to amount to an offence, and there is *prima facie* reason to suppose the accusation true, the Magistrate is bound to proceed, though he may consider a civil suit more applicable. 8 *W. R.* 65.

30. It is not necessary for a Magistrate to caution a prisoner before receiving his or her statement. 5 *M. R. App* 11.

31. A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case. So long as the parties are not mislead and the proper procedure is observed. He may recall an order which he finds to be wrong and substitute any other which he may think right under the law. 12 *W. R.* 40.

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* See 43rd decision in page 77 of this volume.

32. Where there is a *prima facie* case (of abduction in this instance)made out, a Magistrate should send for the witnesses, and form his opinion on the evidence, and not, merely on the strength of the Police report, reject the complainant's petition and refer him to the Civil Court. 9 *W. R.* 21.

MASTER AND SERVANTS.

33. A master is not criminally responsible for the wrongful act of a servant unless he can be shewn to have expressly authorized it. 6 *W. R.* 60.

MOOKTEARS.

34. The word "act" in S. 5 of the Pleaders' and Mooktear's Act XX of 1865, means the doing something as the agent of the principal party which shall be recognized or taken notice of by the Court as the act of that principal. There is nothing in the words of the Act or in its spirit to prevent a person as private agent from going between the prisoner or the duly authorized vakeel upon whom the real responsibility of the defence rests. 19 *W. R.* 8.

35. The Magistrate cannot refuse to permit an accused to attend at the Sessions by Mooktear. 2 *W. R.* 50.

36. A Magistrate has no power to dismiss a mooktear generally unless he be convicted of an offence involving moral turpitude or infamy. 1 *W. R.* 34.

37. Case of a Mooktear who was re-instated by the High Court to his practice after suspension by reason of his having been convicted in two cases, the circumstances of these cases not showing that the Mooktear was guilty of any moral turpitude or that he was unfit to act in the Criminal Courts as a Mooktear. 16 *W. R.* 41.

38. The procedure under S. 16 of the Pleaders' and Mooktears' Act XXof 1865, refers only to cases of professional misconduct, but the words "any such misconduct as aforesaid" being connected with the words "grossly improper conduct in the discharge of his professional duty".

A Mooktear may be suspended or dismissed for any reasonable cause, the words "for any other reasonable cause" in S. 15 referring to cases of other than professional misconduct.

When a Mooktear is alleged to have committed some impropriety for which he could not be criminally prosecuted and which does not come under the denomination of professional misconduct, the High Court may institute enquiries *suo motu*, and if it thinks that any reasonable cause other than professional has been established, may suspend or dismiss the Mooktear without the necessity of either written charge or notice, so long as the Mooktear had every facility for knowing what he was charged with and for making his answer. 16 *W. R.* 15.

ORDER.

39. Where the Sessions Judge on appeal reversed a conviction passed by a Magistrate F. P. of an offence under S. 182 P. C. (which the Magistrate F. P. was competent to try), and directed the Magistrate F. P. to institute proceedings against the accused under S. 211 * O. Cr. P. C. considering that, on the complaint which had been made to him, the Magistrate F. P. was bound to institute proceedings under the latter section :—The High Court reversed that part of the order of the Sessions Judge which directed the Magistrate F. P. to institute proceedings, as the case did not fall within S. 435 † O. Cr. P. C., and there was no provision of law giving the Judge jurisdiction to make such an order. 5 *B. R.* 25.

ORDER (*language of*)

40. In a miscellaneous case (not a judicial proceedings), the Magistrate is not required to record his final order in English. 1 *W. R.* 12.

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* See S. 349 N. Cr. P.C. † See S. S. 296 & 298 N. Cr. P. C.

PRACTICE.

41. A Sessions Judge should designate accused persons by name and not by number. 7 *W. R.* 53.

42. A Sessions Judge is bound to allow a prisoner whose conviction he has confirmed to execute a vakalat-nama to appeal. 1 *M. R.* 4.

43. Sessions Judges should record their reasons for confirming, reversing or modifying the sentences or orders of the Magistrates. 5 *M.R. App.* 12.

44. A separate note of each witness's deposition is required to be taken by S. 195 * O. Cr. P. C.; which is not satisfied by a statement that a witness "deposes as last witness." 9 *B. R.* 91.

45. When a judgment of acquittal is recorded, it is not necessary to record the opinions of the Assessors. 7 *B. R. A. J.* 82.

46. If the examination of an accused person taken before the Magistrate is afterwards read in evidence at the trial before the Sessions Court, the whole of it should be read out. 5 *M. R. App.* 4.

PRISONERS.

DEAF AND DUMB PRISONER.

47. A deaf and dumb prisoner was convicted of an offence upon the trial no attempt was made to communicate with the prisoner respecting the charge against him. The High Court quashed the conviction. 6 *M. R. App.* 7.

48. In the case of an accused person who was deaf and dumb, the Deputy Magistrate who tried and convicted him considered that he did not understand the proceedings and accordingly referred the case to the Magistrate under S. 186 N. Cr. P.C. The Magistrate considered that the accused did understand what he was charged with. Held that the finding of the Magistrate must prevail, and S. 186 did not apply.

Acting under S. 297 N. Cr. P. C. the High Court annulled the order of the Deputy Magistrate, and, as the accused had been previously convicted of an offence under c. 17 of the Penal Code punishable with three years' rigorous imprisonment ordered that he should under S. 315 N. Cr. P. C. be committed for trial to the Sessions Court. 19 *W. R.* 37.

ESCAPE (*from lawful custody*)

49. Escapes by parties detained for offences not punishable under the Penal Code are punishable under the Penal Code. 3 *M. R. App.* 11.

ESCAPED PRISONER (*pursuit of*)

50. Court peons may pursue into the yard of a lodging-house, the door leading into which is open, a prisoner who has escaped from their custody. 3 *W. R.* 68.

EVIDENCE (*prisoner's right in appeal as to*)

51. It is a mistaken view of the law to suppose that prisoners in appeal ought to have the benefit of any doubt with reference to any portion of the evidence. The doubt shown must be of the strongest kind before the Appellate Court should be justified in interfering. 18 *W. R.* 15.

PERSON, ACCUSED (*delivery of*)

52. S.23 Act VII of 1854 is not repealed by the schedule to Act XVII of 1862. The treaty of the 6th of November 1817 between H. H. the Gâikwâd of Baroda and the East India Company provides for the delivery upon requisition of accused persons to H. H. the Gâikwâd in a manner other than in accordance with the

* See S. 334 N. Cr. P. C.

provisions of the sections of Act VII of 1854 prior to the 23rd section. The latter section is, therefore, applicable in such a case.

Semble that Government would not be justified in delivering up an accused person to H. H. the Gáikwád without holding a preliminary inquiry into the guilt of such accused.

Where a warrant issued under S. 23 of Act VII of 1854 directed the accused person to be delivered up to the Resident at Baroda, without showing either that an inquiry had been made, or was about to be made, the Court held that it was not, therefore, invalid, as the presumption was that the accused was to be delivered up to the Resident in order that that officer might institute such an inquiry as is required by the Act.

A warrant issued under S. 23 of the Act should recite either that an inquiry has been held, or is about to be held, with reference to the guilt of the accused. 8 *B. R. O. J.* 13.

TRIAL (*prisoner's right to be present at the*)

53. When the proceedings of an Assistant Magistrate are submitted to the Magistrate under S. 277* O. Cr. P. C., the prisoner has a right to be present at the proceedings before the Magistrate under that section, and to be heard in his defence. 7 *W. R.* 38.

VAKIL (*prisoner's right to instruct*)

54. Prisoners should be allowed to have free converse with their vakils out of the hearing of the Police Officers in charge of such prisoners. 8 *B. R. A. J.* 127.

PROCEDURE.

OWNER OF PROPERTY (*procedure where—seized unknown*)

55. The procedure prescribed in S. S. 131† & 132† of Act XXV of 1861 must be followed before an order confiscating property is made. 9 *W. R.* 13.

56. Petitioner was charged with the theft of certain money found in his house and acquitted. Proclamation having been made for claimants to come in and claim the property, no one appeared, whereupon petitioner preferred his claim and asked the Assistant Magistrate to summon certain witnesses, but the Assistant Magistrate refused to do so and disallowed his claims, the Magistrate on appeal declining to interfere. On reference by the Judge, the High Court held that the Assistant Magistrate was bound to summon the witnesses named by the petitioner, set aside that officer's order, and directed him to dispose of the case after taking due steps for securing the attendance of the witnesses in question. 18 *W. R.* 5.

SPECIAL LAW (*procedure in cases arising under*)

57. A Magistrate is bound, with reference to S. 20‡ O. Cr. P. C. to proceed in the investigation of cases arising under a special law (such as the Salt Law) according to all the provisions of the Code of Criminal Procedure. 14 *W. R.* 36.

SPECIAL PROCEDURE.

58. Cl. 2 S. 13 Reg. VI of 1819 only applies where there has been an accident. Where the Magistrate thinks that a ferry is improperly kept and is in a dangerous condition, he should proceed under S. 4. 7 *W. R.* 32.

PROCEEDINGS (*upon trial by the Jury in the Mofussil*)

59. When the proceedings upon a trial by Jury in the mofussil are consistent with a reasonable construction of that part of the Procedure Code (Chapter XXIII and XXV) where such trial is provided for, the proceedings are good in the absence

* See S. 46 N. Cr. P. C. † See S. S. 416 & 417 N. Cr. P. C. ‡ Repealed by Act X of 1872.

of any distinct ruling to the contrary, and ought not to be examined by the light of English rules of procedure. 14 *W. R.* 59.

PROPERTY (*order for disposal of—regarding which offence committed*)

60. The Assistant Magistrate on a review of the proceedings of the Subordinate Magistrate passed orders directing that certain produce should be delivered over to the parties whom he considered entitled thereto. The Subordinate Magistrate had passed no orders under S. 132* A. O. Cr. P. C. Held that the orders of the Assistant Magistrate were made without any jurisdicison. 5 *M. R. App.* 22.

61. Under S. 132 A Act VIII of 1869, no order can be passed with reference to the disposal of any property in a Criminal Court, unless that property is produced before the Court: such order must be made at the time of passing judgment. 19 *W. R.* 3.

PROSECUTION (*criminal*)

62. Civil proceedings do not constitute a bar to a prosecution in a Criminal Court. 9 *W. R.* 22.

63. In a case of filing a forged *vakalutnamah* in a Civil Court before 1st January 1862, the prosecution can only proceed in the ordinary way, *i e* by way of commitment by a Magistrate on the complaint of the party aggrieved. 5 *W. R.* 43.

64. Where a Magistrate has, in the exercise of his discretion, refused to proceed with a criminal charge pending a civil action in respect of the matter out of which the charge arose, a mandamous will not be granted to compel the hearing of the charge. 1 *M. R.* 66.

65. A Magistrate is not prohibited from enquiring into any case of apparent injustice and oppression brought before him, even where the injury complained of is of a civil nature, provided he stops his proceedings directly he ascertains the nature of the claim. 1 *W. R.* 12.

66. The death of the husband does not necessarily put an end to a prosecution for adultery under S. 497 of the Penal Code. 4 *M. R. App.* 55.

67. As a general rule, one of two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit; or if he does so, the hearing of the criminal case ought to be postponed until the suit is concluded. But although that is a good ground for questioning the propriety of a prosecution, it is not a ground for questioning the legality of a conviction. 17 *W. R.* 46.

PROSECUTOR.

68. A Deputy Magistrate should not act as Magistrate in a case in which he is himself the prosecutor, and take confessions of prisoners before himself. 3 *W.R.*29.

PROSECUTOR (*private*)

69. A private prosecutor cannot move a Court of Sessions under S.419† O.Cr. P. C. in a case which is not before that Court *in appeal*, though he may do so under S. 435‡ of that Code in cases in which the Court of Sessions can interfere. A private prosecutor has no right to be heard before High Court in a case in which he could not be heard in the Sessions Court. 14 *W. R.* 51.

PROSECUTOR (*public*)

70. Appointment of the Magistrate, who in the first instance had tried and convicted the accused, to be Crown Prosecutor to conduct an inquiry subsequently directed in the same case, censured as being unprecedented and objectionable. A public prosecutor should be without a personal interest in the cases which he conducts.

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* See S. 418 N. Cr. P. C. † See S. 280 N. Cr. P. C. ‡ See S. S. 296 & 298 N.Cr.P.C.

It is undesirable that Magistrates whose decisions are under appeal, or who have been engaged in promoting the prosecution, or Police Officers concerned in a case, should sit on the bench beside, or converse privately in Court with, the Judge who is engaged in trying the prisoners' appeal. If the Appellate Judge wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate upon oath or solemn affirmation, in the same manner as an ordinary witness. 8 *B. R. A. J.* 126, 127.

71. It is the duty of the Government pleader or other officer who conducts the prosecution before the Court of Sessions to point out to the Court any glaring discrepancy between the evidence being given by a witness before the Court of Sessions and that previously recorded by the Committing Officer. 20 *W. R.* 38.

PROTECTION (*of Judicial Officers*)

72 Held that a Magistrate who failed to act reasonably, carefully, and circumspectly cannot be set to have "*in good faith* believed himself to have jurisdiction" within the meaning of Act XVIII of 1850; and consequently that he cannot claim the protection of that Act in an action brought against him in a Civil Court. 3 *B. R. App.* 1.

RECORD.

73. There ought to be only one Sessions record, which should be continuous and should contain accurately and consecutively the whole of the proceedings in the trial, including the examination of the accused. 14 *W. R.* 46

74. The principal documents in a Sessions case should be put in a prominent place on the record, and not buried in a mass of papers. 8. *W. R.* 30.

75. The deposition of person murdered, taken before Magistrate, and the medical evidence should be annexed to the Sessions Record. 11 *W. R.* 2.

76. Records of previous convictions should not be put in until the close of the trial, as they can only be used after conviction in determining the measure of punishment. 3 *W. R.* 38; 5 *W. R.* 67.

77. In a case falling under Chapter 15, the statement of the complainant, the evidence of the witnesses, and the reply of the accused, should be recorded. 3 *W. R.* 60.

78. A Sessions nuthee should contain the record of the defence set up by the prisoners in the Sessions Court. 15 *W. R.* 16.

79. Documents which form the basis of a charge against a prisoner should not be buried among a mass of papers in the nuthee, but should be put either in the calendar or by themselves in an envelope or in some conspicuous part of the record where they would be seen at once. 8 *W. R.* 57.

80. In all forgery cases sent up in appeal, the particular paper or papers said to have been tampered with should be readily accessible and should be put with the Sessions record, instead of being buried in the record of the Committing Officer. 7 *W. R.* 112.

81. Duplicates of Calendars sent by the Magistrates to the Sessions Court should be retained in the Sessions Court for a period of three years, after which they may be destroyed or returned to the Magistrates' offices. 6 *M. R. App.* 6.

82. The Magistrate's records of the proceedings prior to commitment should always be forwarded to the High Court. 15 *W R.* 67.

RECORDS (*of previous trial*)

83. The power granted to the Civil Courts of calling for and inspecting the records of a previous trial is one that ought to be exercised with the greatest caution and does not extend to Criminal Proceedings. 12 *W. R.* 73.

SALT (*confiscation and release of*)

84. By S. 18 Act VII of 1864, salt, not being conveyed by the route and to the place prescribed in the rowanna, becomes absolutely confiscated. The power of releasing any such salt is vested in the Board of Revenue under S. 39, and not in the Magistrate. 7 *W. R.* 48.

85. If salt exceeding 5 seers is found within the limits prescribed by S. 12 Act VII B. C. of 1864 unprotected by a rowannah, as required under S. S. 13 and 15, the salt must be held as contraband under S. 16. The power of a Magistrate under S. 29 to confiscate salt not protected by a rowannah in a prohibited district, is not affected because there was no attempt or intention to sell the salt within the prohibited district. 15 *W. R.* 21.

STAMP.

86. A complaint preferred by a Munsif under S. 168 * O. Cr. P. C. need not, though it do not bear the seal of the Munsif's Court, be on stamped paper. 5 *B.R.*104.

87. The illegal seizure and detention of cattle, to which S. 14 of Act III † of 1857 refers, is not an "offence" within the meaning of S. 31 and Sch. 2, No. 1, cl. (*b*), of the Court Fees' Act VII of 1870, complaints of such illegal seizure and detention do not require a stamp.

If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant. 8*B.R.A.J.*22.

88. With the exception of the depositions of the witnesses and the documentary evidence and copies of final sentences or orders passed by Criminal Courts which parties desirous of appealing from such sentence are required by S. 416 ‡ O. Cr.P.C. to file with their petition of appeal, when the party who is desirous of appealing is in confinement under the operation of the sentence or order at the time that he applies for a copy of the same, copies of any part of the record of a criminal trial can only be furnished to applicants on stamp paper. 4 *M. R. App.* 58.

TITLE.

89. A prosecutor in order to establish that a title has been asserted with a fraudulent or dishonest intent, must show that the accused had no reasonable ground for asserting the title.

And that accused asserted the title dishonestly or fraudulently in the sense in which those terms are used in the Indian Penal Code.

It is at all times desirable that questions of title should not be tried in Criminal Courts, and more especially where such questions depend on the construction of obscure documents, or fall to be decided in reference to transactions of which at the best but an imperfect record is preserved. 2 *N. W. P. R.* 202.

TRANSFER (*of North Canara*)

90. Held that there was nothing in the manner in which the district of North Canara was detached from the Madras Presidency, and annexed to the Presidency of Bombay, to prevent the Code of Criminal Procedure ; from operating therein, as if it had always formed a part of the Presidency of Bombay, or to deprive a convict found guilty by the Sessions Judge of the District, on the 18th of September 1862, of the right of appeal, which he then would have had to the High Court, by virtue of S. 408 § O. Cr. P. C., and of 24 and 25 vic. c. 106, and the Letters Patent (of 1862), cl. 26.

The power given by 16 and 17 vic. c. 95, to alter the distribution of territories among the Presidencies, was vested by 21 and 22 vic, c. 106, in the Secretary of State for India, by whose order of the 28th of February 1862 North Canara was an-

* See S. 467 N. Cr. P.C. † Repealed by Act 1 of 1871. ‡ See S. 275 N. Cr. P. C. § See S. 271 N. Cr. P. C.

nexed: the new arrangement of territory to take effect from such date as the Governor General of India in Council, should, by proclamation, appoint for the purposes of the India Councils Act, 1861; which Act has reference solely to the constitution and functions of the Legislative Councils, and does not purport to affect in any way the exercise of the general powers of Government, or the administration of justice and the jurisdiction and authority of the Courts of Justice:—the annexation for these purposes being made by the Secretary of State, and not being qualified or controlled by the proviso in S. 47 of 24 & 25 vic, c 67, which connot be construed as a substantive enactment, or as qualifying or restraining the power vested in the Secretary of State.

Giving an appeal to the High Court, under the Criminal Procedure Code, is not subjecting a District to the Regulations, within the meaning of Reg. II S. 16 cl. 2 of 1827. 2 *B. R.* 106.

TRIAL.

91. A former trial set aside on the ground of want of jurisdiction and illegality, is not a bar to a second trial. 2 *W. R.* 10.

92. Where a Magistrate of a District brought a party heard case on to his file, recorded the rest of the evidence, and passed a decision on the whole of the evidence: Held that such a proceeding was not a legal trial. 2 *N. W. P. R.* 468.

RE-TRIAL.

93. Where the Senior Assistant Sessions Judge without taking evidence acquitted the accused after calling upon him to plead, the prosecutor being unable to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal, and directed the trial to be proceeded with. 5 *B. R.* 68.

SEPARATE TRIAL.

94. The commitment and trial together of several persons, who are charged with having given false evidence in the same proceedings, should be avoided. A Court of Session is competent to try separately prisoners who have been committed together. 11 *W. R.* 16.

SUMMARY TRIAL.

95. In a case tried under the summary procedure authorized by S. 222 N. Cr. P. C., it must clearly appear on the face of the conviction that the case was dealt with as one of those which come under the purview of that section. If the case be one of theft, it should appear what the value of the property alleged to have been stolen really was. 20 *W. R.* 17.

VAKALATNAMAS.

96. Prisoners and others are to have the fullest opportunity for giving vakalatnamas to whomsoever they please. 1 *B. R.* 16.

VAKEEL.

97. A pleader may appear in criminal cases, not only on behalf of an accused person, but also on behalf of a private prosecutor. 14 *W. R.* 23.

98. Case in which the High Court declined on the facts to strike a pleader off the rolls for using improper expressions during the argument of a case before a zillah Judge, who recommended, after observing the requirements of S. 16 Act XX of 1865, that such punishment should be awarded. The Zillah Judge should have called the pleader to order and required him to apologize. 14 *W. R.* 53.

WARNING.

MAGISTRATE (*warning to*)

99. When certain charges did not set out the exact statements made by wit-

nesses which the Magistrate intended to prove false, but the defect was not such as to mislead the accused, the High Court declined to interfere under S. 426* O. Cr. P. C. but warned the Magistrate to be careful for the future. 17 *W. R.* 33.

PERSON, ACCUSED (*warning to*)

100. In warning an accused person before taking down his statement, a Magistrate should state how the accused was warned. 14 *W. R.* 81.

XII. NUISANCES, LOCAL.

APPEAL (*from decision of Jury in case of removal of nuisance*)

1. There is no right of appeal from the decision of a jury appointed to try whether the order of a Magistrate for the removal of a nuisance under S. 308 O. Cr. P. C. was reasonable and proper. Such decision of the jury is not a judicial proceeding with which the High Court can interfere under S. 404† of the Code. 16 *W. R.* 56.

INJUNCTION (*pending inquiry by Jury*) *N. Cr.P. C. S.* 528.

2. S. 314 O. Cr. P. C. authorizes the Magistrates to take immediate measure to prevent imminent danger pending the enquiry of a jury, but not where no jury has been appointed, and after the danger has passed away. 1 *W. R.* 8.

JURY (*constitution of*) *N. Cr. P.C. S.* 523.

3. A jury appointed under S. 310 O. Cr. P. C. is not legally constituted when the Magistrate appoints only the foreman of the jury. The award of a jury under that section long after the expiry of the time fixed for giving an award is illegal, and cannot be upheld by a Magistrate, who should in such a case take up the case himself and decide it. 16 *W. R.* 23.

4. Where a jury is appointed under S. 310 O. Cr. P. C. to try whether an order passed by a Magistrate for the removal of a nuisance or obstruction is reasonable or not, the Magistrate is bound under that section to be guided by the decision of the jury. 12 *W. R.* 28.

5. In referring a case regarding a nuisance to arbitrators under S. 310 O. Cr. P. C., a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be done whenever from any cause the constitution of the jurors is changed and a fresh juror is appointed. Where this is not done, a Magistrate cannot carry out his original order if there is any delay in the submission of the award by the arbitrators. 14 *W. R.* 69.

NOTICE (*service of*)

6. The mere non-service personally of a notice to remove a nuisance is not a sufficient ground for the Court, under S. 434 ‡ O. Cr. P. C., to set aside the Magistrate's order, when it appears that the parties did not take the objection before the Magistrate, and that they in fact admitted knowledge of the existence of the notice, and sought to excuse their failure to obey it. 5 *W. R.* 4.

NUISANCE (*removal of*) *N. Cr. P.C. S.* 521.

7. The obstruction of a private path is not a nuisance under S. 308 O. Cr. P. C. 2 *W. R.* 36.

8. In order to remove a public nuisance, a Magistrate is bound to proceed under S. 308 and following sections of Chapter 20 of the O. Cr. P. C., and is not competent to pass a summary order to the Police to do so. 2 *N.. W. P. R.* 452.

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* See S. 283 N. Cr. P. C. † See S. 297 N.Cr. P.C. ‡ See S. S. 295 & 296 N. Cr.P.C.

9. Held that a Magistrate cannot proceed to pass an order for the removal of a nuisance, under S. 308 O. Cr. P. C. without calling on the party to show cause, why the order should not be passed against him, and without hearing the objections, even if they are filed after the time fixed for their presentation, but before he takes up the case. 2 *W. R.* 36 ; 10 *W. R.* 27.

10. The Magistrate of a District can alone hold proceedings in a case (such as the removal of a thatched house)under S. 308. The Joint Magistrate while in charge of the Magistrate's office has no such jurisdiction. 15 *W. R.* 36.

11. Where a Magistrate has commenced proceedings under S. 308 O. Cr. P. C., he is not at liberty to proceed otherwise than in conformity with the rules laid down in Chapter 20 of the Code. 8 *W. R.* 37.

12. A Magistrate ought not to direct a party to restore a road and canal to their former state, and to show cause why he should not enter into recognizance to keep the peace, without hearing such party. 7 *W. R.* 59.

13. The order of a Magistrate under S. 308 O. Cr. P. C. should be confined to a direction to remove the nuisance complained of. In the case of a tank, the Magistrate cannot order the proprietor to excavate it, the proprietor ought to have the discretion allowed him as to the mode in which he will remove the nuisance caused by the tank. If a Magistrate is compelled to direct the excavation of the tank, the actual cost of excavation can alone be charged against the proprietor, at whose disposition the soil taken out in the course of excavation must be placed 10 *W. R.* 51.

14. A Magistrate's power to fill up a tank is by S. 308, limited to having it fenced in, but where the tank is proved to be injurious to the community, he may, under that section, treat it as a public nuisance, and cause it to bo filled up. 10 *W. R.* 27.

15. The condition and the conduct of an old established slaughter house is proved to bo, in fact, an offensive nuisance and dangerous to the health of neighbours; but the evidence did not show it was in a worst condition than at any time since its establishment ; the occupiers when summoned, refused to ask for a jury, under S. 310 *O. Cr. P. C. Held the Magistrate was justified in suppressing the trade or occupation under S. 308. No length of enjoyment can legalize a public nuisance. 7 *B. L. R.* 499.

16. The Magistrate of a district issued an order under S. 308 O. Cr P. C. calling upon the petitioner to remove a building, on the ground that it was an unlawful obstruction upon a high road. A jury of five persons was appointed by the Magistrate's successor, under S. 310, to report, within 15 days, whether the order was reasonable and proper. The jurors, being without instructions, took different views as to the performance of their duties, but four of them visited the premises, and were unanimous in finding that the building complained of was not on a high-road at all. Five days after receiving reports to this effect, the Magistrate issued another order to the petitioner, requiring him to pull down his house within 15 days, as the jurors had made no report within the time prescribed. The petitioner showed cause under S. 313, but without effect; and the order was repeated. The Session Judge; meanwhile, upon application of the petitioner, called for the proceedings under S. 434; but the Magistrate wrote, questioning the Judge's authority to interfere, and without waiting for a reply, proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant, and sentenced him to 25 days' imprisonment, under S. 188 P. C. His house was also pulled down. The proceedings were ultimately forwarded to the Sessions Judge, whose successor in office returned them with the remark that nothing appeared to have been done contrary to the law for the removal of nuisances.

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* See S. 523 N. Cr. P. C. † See S. S. 526 & 527 N. Cr. P. C.

Held (reversing the conviction) that the Magistrate ought at once to have complied with the precept of the Sessions Judge, under S. 434;* and that he was not warranted in convicting and imprisoning the petitioner for disobeying an order, the legality of which was then properly under the consideration of an Appellate Court,

Held, also, that the petitioner had shown sufficient cause to satisfy the Magistrate, under S. 313,† O. Cr. P. C. that the order to pull down the house was "not reasonable and proper."

Quere—whether Act XVIII of 1850 would protect a Magistrate in such case from being sued for damages. 2 *B. R.* 384.

17. Where persons who were served with notice under S. 313 O. Cr. P. C. to remove a nuisance, showed cause* before the Magistrate, but did not ask him to take evidence or to summon a jury, the High Court declined to interfere with the order passed by the Magistrate under S. 308‡ to remove the nuisance, as there appeared no illegality in the order. The Magistrate should, however, in these cases fully record the grounds on which he acts and his reasons for rejecting the objections made to the removal of the nuisance. 12 *W. R.* 24.

18. Before a person can be legally punished for refusal to remove and reconstruct roof-drains, evidence ought to be taken whether the party has disobeyed the Magistrate's order, and that such disobedience has produced, or is likely to produce harm. 2 *W. R.* 32.

19. The obstruction of a drain into which the sewage of complainant's premises fell, does not fall either under S. 308, or 320§ of the O. Cr.P. C., but is matter for a civil suit and injunction. 5 *W. R.* 58.

OBSTRUCTIONS (*orders to prevent*) *N. Cr. P. C. S.* 518.

20. Held (*Phear. J. dissenting*) that an order passed by a Magistrate under S. 62 O. Cr. P. C. is not of the nature of a judicial proceeding, and therefore cannot be interfered with by the High Court under S. 404$ of that Code. 14 *W. R. F. B. R.* 46; 6 *B. L. R.* 74.

21. S. 62 O. Cr. P. C. does not apply to disputes connected with lands but refers specially to nuisances and other similar matters in which immediate action is necessary in order to avoid the risk of illegal consequences. 12 *W. R.* 66.

22. S. 62 O. Cr. P. C. does not authorize a Magistrate summarily to direct the owner of a tank in a dry bed of a river to destroy the banks, on the ground that they are an obstruction to the public in the lawful enjoyment of the river, and that the stopping of the water interferes with the health of the public. 10 *W. R.* 37.

23. There is nothing in S. 62 O. Cr. P. C. to justify a Magistrate in making an order for the removal of a bund or other obstruction or nuisance on the mere report of a Police Constable; and before making such order he ought to take evidence from the defendants, and, if necessary, on both sides. 11 *W.R.* 46; 3 *B.L. R. A. J.* 4.

24. Under S. 62 O. Cr. P. C., a Magistrate has no power to issue an order, *ex-parte*, to cut down trees, on the representation of a party, supported by the report of the Police that the existence of the trees was a nuisance. 5 *B. L. R.* 131.

25. S. 62 O. Cr. P. C. does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alledged to belong to another person in the absence of evidence showing that a riot or affray was likely to occur. 13 *W. R.* 19.

26. A Magistrate cannot under S. 62 O. Cr. P. C. in general terms forbid two parties to use any musical instrument in the neighbourhood of each other's house, though he may forbid their doing so for the purpose of mutual annoyance. 6 *W. R.* 40.

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* See S. 295 & 296 N. Cr. P. C. † See S.S. 526 & 527 N. Cr. P. C. ‡ See S. 521 N. Cr. P. C. § See S. 532 N. Cr. P. C. $ See S. 297 N. Cr. P. C.

27. A Magistrate ordered the rival holders of two hauts to abstain from holding their hauts on the same day upon adjacent pieces of ground, as he apprehended a continuance of riots and affrays, and annoyance or injury to persons lawfully employed in them. Held, that the order was strictly within the provisions of S. 62 O.Cr.P. C., and the High Court accordingly refused to interfere with it. 11 *W.R.* 5.

28. The temple of Pandharpur, a public temple, is visited at certain periods of the year by a large concourse of pilgrims. With a view to prevent the dangers arising from overcrowding, and to improve the ventilation, the Magistrate F. P., by a written order, under S. 62 O. Cr. P. C. directed the hereditary priests of the temple to widen and heighten the doorway: Held, that such order was legal under the above section.

Semble: that the case would have been the same had the temple been private property; and also that the power of Magistrates to issue orders under the section in question is entirely discretionary. 6 *B. R. A. J.* 36.

29. When a case falls both under S. 62 and under S 308 of the O. Cr. P. C., the order of the Magistrate ought not to be absolute in the first instance. He should give the defandant an opportunity to show cause against the order.

Semble—Whether a case comes under either of these two sections or under both, the order of the Magistrate ought to contain a clear statement of the facts upon the basis of which the Magistrate has made the order. 1 *B. L. R. A. J.* 20.

30. Where A complained merely to the Magistrate that "a certain road had been obsturcted by B and others," held, that the Magistrate was not bound to enquire into the matter under S. 320 of Act XXV of 1861. 2 *B. L. R. App.* 9.

31. An order by a Magistrate, prohibiting the straying of cattle within certain local limits, is not an order within the meaning of S. 62 O. Cr. P C. There can be no conviction for disobedience of such order under S. 289 P. C. 9 *B. L. R. App.* 36.

32. Orders made under S. 518 N. Cr. P. C. are not judicial proceedings and therefore are not within S. 297 of the Code. 20 *W. R.* 53.

PENALTY.

33. The occupier who suffers the land to be in a filthy state, is the person liable for the penalty. 8 *W. R.* 45.

34. A Deputy Magistrate should proceed under Chapter 20 O. Cr. P. C. for the removal of an unlawful obstruction from a thoroughfare, and not under S. 320 which relates to disputes concerning use of land or water. 5 *W. R.* 5.

XIII. POLICE.

ARREST (*of accused found in Court*) *N. Cr. P. C. S.* 104.

1. A Magistrate is not justified by S. 206 O. Cr. P. C., to take a person, without any previous notice or summons, from among the audience or attendant witnesses in open court and place him in the dock to be immediately tried upon a charge which had already been commenced to be entertained against other prisoners and on which evidence had already been given. That section applies to investigations preliminary to commitment for a subsequent trial, and not to cases where the trial is actually being proceeded with. 14 *W. R.* 20.

ARREST (*without warrant*)

2. The Police, may, without any formal complaint, apprehend any person found with stolen property. 8 *W. R.* 28.

3. The arrest of a person accused of the offence of unlawfully being in possession of smuggled opium without a warrant is generally illegal, except under the circumstances specified in S. 108 * O. Cr. P. C. 9 *B. R.* 343.

4. The general exception provided by S. 79 P. C. and the power conferred by cl. 5 S. 100 † O. Cr. P. C. was held not to protect a Police Officer who did not act in good faith, that is, with due care and attention. The cl. 5 S. 100 refers to property which is proved to have been stolen, and not to any thing which a Police Officer may choose to imagine has been stolen. 10 *W. R.* 20.

DETENTION (*of accused by Police*) *N. Cr. P. C. S.* 124.

5. A prisoner arrested under a warrant should be brought promptly before a Magistrate, who has then no authority to further detain him in custody or to remand him to prison without some reason made manifest to him, either in the shape of sworn testimony given before him, or in some other form which can be put upon the record, and which is sufficient to justify him in sending the prisoner to prison. 20 *W. R.* 23.

6. *Per Glover, J.*—Where a Sub-Inspector of Police is charged with having detained prisoners for more than 24 hours, it is not necessary for the Crown to prove that he detained them with a guilty knowledge, as S. 124 Act X of 1872 imperatively lays down that accused persons are on no account to be detained beyond that time except under special order of the Magistrate,—which was not obtained in this case. 19 *W. R.* 36.

7. Held that the order of a Magistrate sanctioning the detention by the Police of an accused person for an indefinite period is illegal. At the expiration of 24 hours from the time of arrest, the accused must be brought before a Magistrate, who can then remand for a period not exceeding 15 days, under S. 224 ‡ O. Cr. P. C.

No remand without a hearing can lost for a longer period. 5 *B. R.* 31.

8. Circumstances may exist in which a special order of the nature contemplated in S. 152 O. Cr. P. C. may properly be passed; for instance, if, in the case into which the Police are inquiring, the suspected or confessing parties have voluntarily offered to conduct the Police to a place where the stolen property will be found, and such offer cannot be carried into execution within the limited period of 24 hours, the power which the abovementioned section confers on a Magistrate may be rightly exercised.

But to return accused persons to the Police, that they may be forced to give a clue to the stolen property, is to abuse the provisions of S. 152, with a view to the breach of the injunctions of S. 146 § of the O. Cr. P. C. 3 *N. W. P. R.* 276.

ENQUIRY (*by Police*)

9. An enquiry by the Police into complaints falling under Chapter 14 O. Cr. P. C. is not warranted by law. 8 *W. R.* 12.

10. Held *by Loch. J.* (*Glover J. dissenting*) that a Magistrate has no authority to order a Police enquiry in a case under Chapter 14 O. Cr. P. C. 10 *W. R.* 49.

11. A Magistrate is competent under S. 133 ‖ O. Cr. P. C. to direct an enquiry to be made by a Police Officer into an offence punishable under a Local Act.—Such as the Police Act: Held that where a Magistrate professes to act under one section of the Criminal Procedure Code under which he has no jurisdiction, but it is found, that he has jurisdiction under some other section of the Code, the mistake is one which does not justify interference with the Magistrate's order, if otherwise good, and if the accused has not been prejudiced thereby. 14 *W. R.* 41.

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* See S. 93 N. Cr. P. C. † See S. 92 N. Cr. P. C. ‡ See S. 194 N. Cr. P. C. § See S. 120 N. Cr. C. ‖ See S. S. 109 & 110 N. Cr. P. C.

INFORMATION (*of offences*)

12. The village Munsif is bound to report the commission of all offences committed in his village to such person and in such manner as may be most likely to be effectual for the apprehension of the offenders. 3 *M. R. App.* 31.

LIABILITY (*of Police*)

13. Appellant charged the prosecutor with theft, and he was handed over to the Police. Held, that the Police, and not the appellants, are responsible for any oppression or extortion practised by the Police on the prosecutor while in confinement. 1 *W.R.* 26.

POLICE OFFICERS.

CONVICTION (*of Police Officers*)

14. Where a Sub-Inspector of Police was charged with having purchased a pony which had been impounded, it was held that the Magistrate should have proceeded under S. 19 Act 1 of 1871 taken with S. 169 P.C. and that the accused could not be convicted under S. 406 P. C. of criminal breach of trust. 16 *W. R.* 52.

DUTY (*of Police Officers*)

15. Where a man is grievously wounded in a riot, the Police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties, and in the absence of any proof that they exceeded their duty, the Police were held entitled to the protection of the Court. 8 *W. R.* 36.

16. A Police Officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession. No part of his evidence as to the discovery of facts in consequence of such confession is legally admissible. 8 *W. R.* 13.

17. The Police are not at liberty to bind witnesses over to appear a month after date. 6 *W. R* 52.

18. The words of S. 28 of the District Police Act, which authorise the Police "to keep order in the neighbourhood of places of worship during the time of public worship," confer upon the Police a power of regulating traffic, and putting a stop to noises, in the neighbourhood of places of worship during the time of worship, but do not limit their general powers of keeping order at and within all places of public resort, temples, jatras, or the like, when necessary. 7 *B. R.* 2.

PROCEDURE (*when a Police Officer deputes another to arrest without warrant*)

19. S. 140 * O. Cr. P. C. does not apply to a case of arrest for dacoity made without warrant by a Subordinate Police Officer in the presence of a head Constable who authorized him to make the arrest. 11 *W. R.* 20.

20. An officer, subordinate to an officer in charge of a Police Station, who was deputed by the latter to make an inquiry under S. 135 †O.Cr. P. C. attempted without a search warrant to enter a house in search of property alleged to have been stolen, and was obstructed and resisted: Held (applying S. 99 of the Penal Code) that, even though the Police Officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice. 7 *B. R. A. J.* 50.

SEARCH WARRANT.

21. It is essential to the legality of a search warrant, under S. 114 ‡O.Cr.P.C. that the production of some *specified and particular thing* is desired; that the Magistrate alone shall determine that such production is necessary; and that a specifi-

* See S. 102 N. Cr. P.C. † See S. S. 114 & 115 N.Cr.P.C. ‡ See S. 368 N. Cr.P. C.

ed house or place only is to be searched. The warrant must, under S. 115 * of that Code, be directed to some other person, only when a Police Officer is not forthcoming. 8 *W. R.* 74.

22. Before a warrant can issue attaching the property of a surety, he should be called on under S. 220 + O. Cr. P. C. to show cause why he should not pay the penalty mentioned in his bond, and it must appear clearly on the face of the record that he had such notice given him. 15 *W. R.* 82 ; 7 *B. L. R. App.* 37.

XIV. PROCEEDINGS TO COMPEL APPEARANCE.

ABSCONDING.

ATTACHMENT OF PROPERTY (*of absconding person*) *N. Cr.P. C. S.* 172.

1. The words " order the attachment of any movable or immovable property" in S. 184 O. Cr. P. C. are enabling and not restrictive, and the Magistrate may attach both kinds of property. But he must issue his warrant of attachment simultaneously with the proclamation if he resorts to attachment at all. 4 *M. R. App.* 48.

2. The Joint Magistrate's order of confiscation set aside (1) because made without permitting the accused to shew cause against the confiscation of his goods, (2) because the confiscation ought not to be carried out where the accused has been apprehended and brought to trial, before the passing of the order, and (3) because the Joint Magistrate acted in contravention of the order of the Magistrate releasing the property from attachment. 5 *W. R.* 8.

PROCLAMATION (*for absconding person*)

3. S. 172 P. C. applies to a *witness* who absconds to evade service of warrant issued under S.S. 188 ‡ to 190 § of the O.Cr.P.C., while S. 183 $ of the latter Code applies to a *party* who absconds. 9 *W. R.* 70.

ARREST.

4. The wounding of a thief by a Chowkedar in order to his arrest, held under the circumstance to be justifiable. 2 *W. R.* 9.

5. A person complaining of irregularity of process issued for his arrest and for the attachment of his property, before applying to the High Court under S.404 ¶O.Cr. P.C. should make application to the Magistrate issuing such process for his discharge and the release of his property on the ground of the informality of the warrants. 2 *N. W. P. R.* 441.

COMPLAINANT.

6. Where a person gave information to a Magistrate and the Police of a murder having been committed, and subsequently, on the charge having been dismissed, petitioned the Session Judge to have the matter re-investigated : Held that he was not complainant within the meaning of S 360 O. Cr. P. C. 5 *B. R.* 85.

COMPLAINANT (*examination of*) *N. Cr. P. C. S.* 140.

7. Under S. 66 O. Cr.P. C., a Magistrate is bound to examine the complainant and record his deposition and then to pass orders for summons or otherwise as may be necessary. 16 *W. R.* 59.

8. A Magistrate cannot refuse a summons to a complainant, even in a case in which the charge might have been laid at the Police in the first instance, but is bound, under S. 66 O. Cr. P. C. to examine the complainant on oath and pass orders on the case. 14 *W. R.* 36; 6 *B. L. R.* 74.

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* See S. 370 N. Cr. P. C. + See S. 397 N. Cr. P. C. ‡ See S. 352 N. Cr. P. C. § See S, 354 N. Cr. P. C. $ See S. 171 N. Cr. P. C. ¶ See S. 297 N. Cr. P.C.

9. The Magistrate of the District, on a complaint being presented to him, has no power to refer the petition to a Subordinate Magistrate for trial until he has himself reduced the examination of the petitioner into writing in accordance with the provisions of S. 66 of the O. Cr. P. C. 4 *N. W. P. R.* 88.

10. On receipt of a complaint the Magistrate of District is not bound, under S. 66to examine the complainant before referring the complaint to a Subordinate Magistrate. The examination of the complainant by the Magistrate to whom the case is referred is sufficient for the regularity of the proceedings. 18 *W. R.* 18 ; 9 *B. L. R.* 146.

11. A Magistrate of a District is competent, under S. 66 to make over a petition presented by a complainant for enquiry and trial to a Deputy Magistrate who exercises the full powers of a Magistrate. 14 *W. R.* 1 ; 5 *B. L. R.* 160.

COMPLAINTS.

12. Where an accused person appears voluntarily before a Magistrate to answer a charge, the want of a complaint on oath, necessary for the issuing of a summons or warrant (S. S. 66 and 43 *O. Cr. P. C.) becomes immaterial.

Semble—A Magistrate taking a complaint and issuing a summons thereon, acts not ministerially, but judicially. 5 *B. R.* 29.

13. A Magistrate may take cognizance of a case, on the information of a third person, without any complaint by the party injured. 6 *W. R.* 3.

14. The report of a Police Officer referred to in S. 66 A† of the O. Cr. P. C. means, not any communication made by a Police Officer, but the formal report drawn up under S 155‡ O. Cr. P. C., in cases in which the Police may arrest without warrant. 8 *B. R.* 113.

15. A Civil Court may, under S. 171§ O. Cr.P.C. transfer a case to the Criminal Court for investigation without specifying the particular officer by whom it is to be investigated ; and the deposition of the Civil Court Officer setting forth the charge on which he transferred the case to the Criminal Court is a sufficient complaint. 13 *W. R.* 45.

16. Where a Policeman in whose sight a theft was committed arrested the thief, and, being himself unable to take or send the accused to a Magistrate, sent a report, on which the Magistrate issued a warrant: Held that, under these circumstances, the accused was legally brought before the Magistrate. 5 *B. R.* 99.

17. In a case in which the servant of an Indigo Planter preferred a charge against certain parties for cutting and carrying away indigo crop which was in his charge, the Joint Magistrate dismissed the charge on the ground that a more responsible servant ought to have laid the complaint : Held that the Joint Magistrate ought to have tried the case. 18 *W. R.* 55.

18. Where it is sought to recover the penalty described in S. 17 Act IX of 1868 from any person who omits to take out a certificate, the Collector who issued the notice should prefer a complaint before a Magistrate, and the Collector cannot prefer the complaint before himself in his capacity of Magistrate. 4 *M. R. App.* 62.

19. The accused was found in the complainant's house by night, but he stated that he was there for the purpose of carrying on an intrigue with the complainant's wife. The complainant refused to lay a complaint of house-trespass with intent to commit adultery. Held, that the Magistrate was right in refusing to convict of a charge which the husband refused to make. 5 *M. R. App* 5.

20. Where a complaint laid before a Magistrate F. P. by certain Government *employés* accused the prisoner of criminal breach of trust of their wages, but from

* See S. 331 †See S. S. 23 & 25 ‡See S. 127 N. Cr. P. C. §See S. 471 N. Cr. P. C.

the evidence adduced it appeared that the offence of which the prisoner was guilty was criminal breach of trust of Government money : it was held that the Magistrate F. P. had power to frame a charge against, and convict, the prisoner of the latter offence without a fresh complaint being made to him. 5 *B. R.* 100.

21. In the class of cases specified to which the 21st Chapter of the O. Cr. P. C. relates, the complaint or authorization of the Court against the authority of which such offence is alleged to have been committed, is a sufficient warrant for the commencement of criminal proceedings. 14 *W. R.* 35 *B. L. R.* 660.

22. Conviction and sentence under S. 3 Act X *of 1862 (Stamp Act) reversed, because no complaint had been made before the trying Magistrate. 5 *B. R.* 48.

23. A conviction and sentence by a F. P. Magistrate, under the Railway Act reversed ; there being no complaint made before the Magistrate, as required by the Code of Criminal Procedure. 4 *B. R.* 4.

DISMISSAL (*of complaint*) *N. Cr. P. C. S.* 147.

24. In a case in respect of which a warrant might issue, and which is triable under Chapter 14 of the O. Cr. P. C., a Magistrate ought, under S. 180 of that Code, by virtue of S. 244 as amended by Act VIII of 1869, to order the discharge of the accused persons, although they are in attendance, if he thinks that there is no case of a criminal character made out against them. 14 *W. R.* 63 , 6 *B. L. R. App.* 6.

25. The words "dismissed without inquiry" in S. 435 † O. Cr. P. C., refer to a complaint which a Magistrate, under S. 67 of that Code, has dismissed without making the inquiry he is empowered to make under S. 180. 3 *N. W. P. R.* 261.

26. A Magistrate has a discretion under S. 67 O. Cr. P. C., to dismiss a complaint at once, and is under no obligation to go further. 10 *W. R.* 50.

27. A Magistrate is bound at least to examine a complainant before he can exercise the discretionary power to issue process or dismiss the complaint which is given to him by S. 67 O. Cr. P. C. 4 *M. R.* 162 ; 8 *W. R.* 12 ; 16 *W. R.* 39.

28. A Magistrate may dismiss a complaint, under S. 67 O. Cr. P. C., before issuing a summons for the attendance of the accussed ; but when all the parties are in attendance, he is bound to follow the procedure laid down in S.S. 265 ‡ and 266 ‡ O.Cr.P.C. and cannot dismiss the complaint without hearing the evidence. 10 *W. R.* 61.

29. A Magistrate removed a case to his own file from that of the Joint Magistrate after the latter had issued warrants upon the footing of the complaint and immediately suspended the warrants and dismissed the complaint under S. 67. Held that the Magistrate ought to have proceeded with the case as from the stage at which he found it, and that he committed a material error by not doing so. 19 *W. R.* 28.

30. Where an accused, for having repaired a public road without having previously asked for leave to repair it, was, on simple petition, charged with having obstructed the road, and the complainant never appeared :—Held that the Deputy Magistrate ought to have dismissed the complaint. 7 *W. R.* 31.

31. The Deputy Magistrate censured for his precipitancy in dismissing a complaint of a deliberate attempt at extortion, supported as it was by evidence on the record. the prisoners having been acquitted, the Court passed no further order regarding the case. 17 *W. R.* 7.

32. In this case the Court declined to say that, as a matter of law, the Magistrate acted illegally, in calling upon complainant to produce proof ex-parte to justify the issue of process, and upon default of such proof in dismissing the charge. 17 *W. R.* 3.

33. Sanction was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant.

* Repealed by Act XVIII of 1869. † See S. S. 296 & 298 N. Cr. P. C. ‡ See S. S. 206 & 207 N. Cr. P. C.

The Magistrate dismissed the complaint on the ground that the complainant had taken no step to prosecute for three months after the sanction was obtained. Held, that the Magistrate had power to dismiss the complaint. 6 *M. R. App.* 15.

34. The High Court refused to interfere with an order of a Magistrate, by which he dismissed a complaint of theft, because it appeared to him, after making enquiries from the Police. before whom the complaint was in the first instance brought, that the complaint was not one that the Criminal Court should entertain, but in respect to which a suit in the Civil Court should be brought. 11 *W. R.* 54.

35. A Magistrate was held to have acted rightly in dismissing a complaint under S. 17 of the certificate Act IX of 1868, because there was no evidence that the names of the accused were included in the list mentioned in S. 13. In prosecutions under this Act, a Magistrate must proceed in the manner laid down in Chapter 15 of the O. Cr. P. C. and must require proof of all the facts which go to constitute the offence. 11 *W. R.* 56.

36. A Deputy Magistrate was held to have acted irregularly in dismissing a complaint and directing the trial of the complainant under S. 211 P. C. without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant or allowing a reasonable time for the attendance of such of the witnesses as were not present. 13 *W. R.* 37.

37. A charged B before a Magistrate, for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the Police, and reported to be false. The Magistrate, without recording the complaint under S. 66 O. Cr. P. C. sent for the Police papers, and under S. 180 of the same Code dismissed the case: Held, that the proceedings were illegal; that the Magistrate was bound under S.66 to record the examination of the complainant, before he could, under S. 180 dismiss the complaint. 3 *B.L.R.A. J.* 53.

38. After complainant's preliminary examination, the case was referred to the Police for report, and complainant, had notice to appear on 6th November to hear the report. On 31st October, the Assistant Magistrate dismissed the case upon the report of the Police Officer without giving complainant an opportunity to show cause against the dismissal. His order was set aside by the High Court. 17 *W. R.* 2.

ENTERTAINMENT OF CASES (*without complaint*) *N. Cr. P. C. S.* 142.

39. To give a Magistrate jurisdiction to take cognizance of an offence without any complaint under S. 68 O. Cr. P. C. there must be an offence committed which is punishable under the Penal Code or under some special Act. 19 *W. R.* 4.

40. By S. 68 O. Cr P. C., a Magistrate can take cognizance of an offence, without any complaint, only when it has come to his *knowledge* that such offence has been committed. A gratuitous suspicion or a belief founded on private information contained in an anonymous petition is not knowledge. A Magistrate is bound to disclose the information, private or otherwise, on which he acts and issues warrants for the arrest of the accused. 13 *W. R.* 1.

41. S. 68 O. Cr. P. C. applies to cases in which the private individual who is injured or aggrieved or some one on his part does not come, forward to make a formal complaint; and even in such cases the jurisdiction of the Magistrate to arrest requires for its foundation a personal knowledge of the fact that an offence has been committed—knowledge derived from testimony legally given before him. The report of the Police or any statement not on oath or short of an actual formal complaint is not sufficient to give the Magistrate jurisdictoin to issue a warrant. 13 *W. R.* 27.

42. S. 68 O. Cr. P. C., gives a Magistrate jurisdiction on proper evidence to issue a warrant for the arrest of persons in a pending case. 16 *W. R.* 50.

43. A Magistrate of a district has power under S. 68 O. Cr. P. C. whether

there be a private prosecutor or not, to order the arrest of a person who had been previously under trial by a Subordinate Magistrate, and who had been discharged under S. 225* of that Code. 14 *W. R.* 65; 6 *B. L. R. App.* 67.

WITHDRAWAL (*of complaint*)

44. Cases instituted and tried under c. 14 cannot be struck off the file at the request of the complainant, or for want of prosecution on his part. The Magistrate must proceed in such cases in the manner prescribed by that Chapter, notwithstanding the complainant may desire to withdraw his complaint. 3 *N. W. P. R.* 41.

45 The withdrawal of a complaint by the complainant operates as an acquittal, and the High Court has no authority to entertain the matter at all, except upon an application duly made with sanction of the Government. 19 *W. R.* 55.

COMPROMISE.

ADULTERY (*compromise in case of*)

46. The power given to Magistrates to permit complainants to withdraw their complaints is confined to cases falling for disposal under Chapter 15 of O. Cr. P. C. Consequently, a charge of adultery cannot be withdrawn by a complainant with the Magistrate's consent. 2 *N. W. P. R.* 234.

BRIBERY (*compromise in case of*) *N. Cr. P. C. S. S.* 188 & 210.

47. Held, that bribery and other offences punishable under the Indian Penal Code with imprisonment exceeding 6 months are not triable under Chapter 15 O.Cr. P. C. and cannot therefore, be compromised under S. 271 of the latter Code. 12 *W. R. F. B. R.* 59.

PROCESS (*postponement of issue of*) *N. Cr. P. C. S.* 147.

48. S. 180 O Cr. P. C. was not intended to enable a Magistrate in ordinary cases to examine witnesses in the absence of the accused. Under S. 67 O. Cr. P. C. a complainant has a right to an adjudication upon the point, whether in the judgment of the Magistrate there is sufficient ground for proceeding. 15 *W. R.* 53; 7 *B. L. R.* 7.

49. Under S. 249† Act VIII of 1869, which extends the provisions of S. 180 to trials of offences under Chapter 14, a Deputy Magistrate may dismiss a complaint under that Chapter without calling evidence, if in his judgment there is no sufficient ground for proceeding under it.

Under the circumstances of this case however, the High Court considered that the Deputy Magistrate should have made enquiries before charging the complainant with making a false charge under S. 211 of the Penal Code. 16 *W. R.* 44.

RECOGNIZANCE (*to appear*)

50. A recognizance binding over an accused person to appear to answer a charge, should specify the *particular day* on which he should be in attendance in Court. 11 *W. R.* 47.

51. Held, that where the personal attendance of an accused is dispensed with, a recognizance bond, if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to appear, either in person or by an agent; and that a Magistrate has no legal authority to secure the attendance of an agent by such a bond. 5 *B. R.* 64.

52. In a case which is made over for investigation to the Police, the prosecutor and his witnesses should be required, under S. 151‡ of the O. Cr. P. C. to enter into recognizances to attend and give evidence. 11 *W. R.* 47.

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* See S. 195 N. Cr. P. C. †See S. 341 N. Cr. P. C. ‡See S. 123 N. Cr. P. C.

RECOGNIZANCE TO APPEAR (*forfeiture of*)

53. The estreating of recognizances is a proceeding resorted to where persons who have undertaken to give evidence in a criminal enquiry have failed without just excuse to attend and have thus created an obstruction to public justice ; but where a Magistrate thinks it proper to estreat their recognizances, he ought to allow them an opportunity of justifying their default. 11 *W. R.* 40.

54. Where a defendant charged with an offence bound himself to appear before a Sub-Magistrate on the 10th June and the defendant did appear on that day but made default on the 11th of June on which the case was called :—Held that there was no forfeiture of the recognizance. In such cases S. 219* O. Cr. P. C. requires that the Magistrate shall form a reasonable opinion that there has been wilful default before issuing process to enforce the penalty. 4 *M. R. App.* 44.

55. Defendants were charged with theft, and on their appearance before the Sub-Magistrate on 1st May were bound over by recognizance to appear from that date until the close of the trial. On the 2nd May when the case was called on, defendants were not present, but they appeared on the 3rd. The Sub-Magistrate heard what they had to say and directed the penalties on the forfeited recognizances to be levied from the defendants. Held, that there was no ground for the interference of the High Court as a Court of Revision ; that there was nothing illegal in requiring defendants to execute such a bond, and that no notice was necessary before proceeding to enforce the penalty. 6 *M. R. App.* 39.

SECURITY (*for appearance*)

56. Where a surety conditioned that he would be responsible for the continued presence of an accused person at one Court (Nowadah), it was held, that the surety was released from liability under his recognizance by the permission which the Court at Nowadah gave the accused, without the surety's consent, of leaving that place on business, and also by the subsequent transfer of the case to another Court (Gya). 13. *W. R.* 53.

SUMMONS (*on complaint*)

57. If a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant. The law vests him with a discretion, which discretion it is incumbent on him to exercise.

At the same time, the Magistrate should always take the examination of the complainant. 3 *N. W. P. R.* 272.

SUMMONS (*without complaint*)

58. The power which a Magistrate of a district or a Magistrate in charge of a division of a district has to issue a summons without any complaint is not affected by the circumstance that it appealed that the offence with which the accused was charged came to the knowledge of the Magistrate otherwise than through a petition which was presented against the accused. 11 *W. R.* 1.

SUMMONS (*service of*)

59. The mere showing to a witness of a summons issued under S. 186† O. Cr. P. C. is not sufficient service. Either the original should be left with the witness, or should be exhibited to him and a copy of it delivered or tendered. 5 *B. R.* 20.

60. Refusing to sign a summons by an accused person does not constitute the offence of intentionally preventing the service of a summons on himself, under S. 173 of the Penal Code. 5 *B. R.* 34.

61. The proclamation issued under S. 159 Act VIII of 1859 cannot be legally affixed to the *mal cutcherry* of a defaulting witness. Before the provisions of that

* See S. 396 N. Cr. P.C. † See S. 365 N. Cr. P. C.

section can come into play, personal service of summons must be attempted. In the absence of process of legal service, the Magistrate's order of imprisonment for contempt under S. 174 P. C., and S. 168 *O. Cr. P. C. was quashed. 7 *W. R.* 58.

SUMMONS (*service of—beyond jurisdiction*)

62. Magistrates may under the Criminal Procedure Code issue summonses for service upon witnesses beyond the limits of their Districts. 3 *M. R. App.* 5.

WARRANT (*of arrest*)

63. A warrant, which did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, quashed. 6 *B. L. R. App.* 129.

64. A warrant for the arrest of a person on a charge of abduction should state the intent with which the offence was committed. 15 *W. R.* 4.

65. A Magistrate not being the Magistrate of the district, nor in charge of a division of the district, is not competent to issue warrants for the arrest of persons against whom no complaint has been preferred to him, nor any charge made by the Police. 3 *N. W. P. R.* 317.

66. A Magistrate or Municipal Commissioner has no power under Act III of 1864 (B.C.), to issue a warrant for the arrest of a person who may have failed to appear on a summons to answer a charge under S. 27 of that enactment for using premises as a straw or wood depot without a license.

The provisions of Chapter 15 O. Cr. P. C. are not applicable to offences under Act III of 1864 (B. C.) 16 *W. R.* 1.

67. In cases in which the Police cannot arrest without a warrant, a warrant cannot be legally issued by a Magistrate except on a complaint made upon oath (or under the provisions of S. 68 †O. Cr P. C.) whether the Magistrate issuing the warrant is authorised to entertain cases either on complaint preferred directly to himself or on the report of a Police officer, under S. 66 A ‡ of the Criminal Procedure Code or not. 8 *B. R.* 113.

WARRANT (*direction of*)

68. A warrant issued under S. 58 of Act XIII of 1856 should be addressed to some one or more Inspectors, and not generally to "all Constables and Police Officers." Where a warrant in the latter form was executed under the direction of an Inspector, it was held that the error in the form of the warrant was merely an error of procedure, and did not affect the validity of the conviction, under S. 57 of the Code, of persons apprehended in pursuance of the warrant so executed. 8 *B.R.O.J.* 1.

WARRANT (*execution of*)

69. The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate. 17 *W. R.* 55 ; 9. *B. L. R.* 354.

WARRANT (*form of*)

70. Under S. 77 § O. Cr. P. C. and the corresponding section of the amended Act, a Magistrate may issue a warrant to an unofficial person, but he can only do so when he cannot obtain the assistance of the Police or when the urgency is imminent. 13 *W. R.* 27.

71. A warrant issued under S. 76 $ O. Cr. P. C. should be sealed, should describe the person to be apprehended under it with reasonable particularity so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it.

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* See S. 467 N. Cr. P. C. † See S. 142 N. Cr. P. C. ‡ See S. S. 23 & 25 N. Cr. P. C. § See S. 161 N. Cr. P. C. $ See S. 159 N. Cr. P. C.

Where a warrant was defective in all the above particulars, the prisoner apprehended under it was released by the High Court. 9 *B. R.* 154.

WITNESSES.

LADIES, HINDOO (*attendance of*)

72. The attendance of Hindoo ladies of respectability and secluded habits as witnesses should not be required where no case is actually before the Court. 3 *W. R.* 46.

PENALTY (*for non-attendance of witness*)

73. An enquiry should be made into the excuse given by a person for his non-attendance as a witness, before enforcing a fine for such non attendance : in order that the Sessions Judge, or other authority, may fairly exercise the discretion given him by S. 221* of the O. Cr. P. C. 2 *N. W. P. R.* 113.

74. Where a recusant witness does not make his appearance the Magistrate may sell any part of the attached property and recover the amount of fine imposed on him. The fine is not illegal by reason of the witness's answers to the charge not having been recorded. 2 *W. R.* 45.

SUMMONS (*securing the attendance of witnesses by*)

75. A Subordinate Magistrate cannot bind over witnesses by recognizances to appear before himself. The proper course to enforce attendance is by summons, and, if that fails, by warrant. 4 *M. R. App.* 6.

76. Where a Magistrate considered that the evidence of a person who was not produced was material, it was held that he should have summoned such person as a witness under S. 351 of N. Cr. P. C. 20 *W. R.* 67.

77. S. 186 † refers to cases under c. 12, which are triable by the Court of Sessions, and not to cases under Chapter 15, which are triable by a Magistrate. 9 *W.R.* 3.

78. Conviction quashed, the prisoner's witnesses not having been summoned. 5 *W. R.* 65.

79. A Magistrate is not bound, under S.191‡ to enforce the attendance of witnesses by warrant, except upon proof of due service of summons. 7 *W. R.* 37.

80. A Magistrate cannot issue a warrant of arrest against a witness under S. 260§ O. Cr P. C. unless he is first satisfied that the witness has disobeyed a summons which was served on him. 14 *W. R.* 20.

WARRANT (*securing the attendance of witness by*)

81. S. 188 ‖ O. Cr. C. P. empowers a Magistrate to issue a warrant against a witness, only when, after a reasonable enquiry, he believes that a particular witness will not attend voluntarily. It does not authorize the issue of warrants by whole sale in lieu of summonses. A warrant under S. 188 is a warrant of arrest under S. 76¶ in form B and not in form C. 13 *W. R.* 1.

82. A Magistrate has no authority to issue simultaneously a summons and a warrant to a witness, nor can he issue a warrant under S. 188 unless he has reason to believe that the witness will not attend in obedience to a summons. 12 *W. R.* 18.

XV. PROSECUTIONS IN CERTAIN CASES.

INVESTIGATION (*by Magistrate*)

1. A Registrar under Act XX of 1866 is competent under S. 95 to institute a prosecution for any offence under that Act. 10 *W. R.* 5.

* See S. 394 N. Cr. P. C. † See S. 365 N. Cr. P.C. ‡ See S. 355 N.Cr.P.C. § See S. 145 N Cr. P. C. ‖ See S. 352 N. Cr. P. C. ¶ See S. 159 N. Cr. P. C.

2. When a Civil or Criminal Court sends a case for investigation to a Magistrate under S. 171 *O. Cr. P. C., the Magistrate to whom the case is sent must himself hold the investigation. 6 *M. R. App.* 2 ; 5 *B. R.* 41 ; 12 *W. R.* 49.

3. Where a Civil Court sends an offence under S. 193 P. C. to a Magistrate for investigation and commitment, if necessary, the Magistrate cannot return the case to the Civil Court, nor can the Civil Court, after it has sent a case to the Magistrate, commit it to the Sessions. The Magistrate should himself proceed with the case and take evidence therein. 12 *W. R* 41 ; 3 B. *L. R. A. J.* 47.

SANCTION (*for prosecution*)

4. The plain intention of the Legislature in S. 171 O. Cr. P. C. was that the Court before which an offence was committed and by which the preliminary enquiry was made should not be the Court to investigate, try, or commit for trial. 15 *W. R.* 88.

5. Under S. 171 O. Cr. P. C. a Court has no power to send a case to be investigated by the Magisterial authorities, but must specify the Magistrate by whom the investigation is to be made. 4 *N. W. P. R.* 86.

6. The law does not require the sanction to a prosecution to be given in any particular form of words, and it permits such sanction to be given at any time.

When a Sessions Court directs a commitment, it must be taken to sanction the prosecution out of which the commitment arises. 2 *N. W. P. R.* 32.

7. The words "such sanction may be given at any time" in S. 169 †O. Cr. P. C. must be construed reasonably, and "any time" means a time which does not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before.

No. appeal lies against a Judge's order sanctioning such prosecution. 18 *W. R.* 62.

8. Where a Civil Court gives sanction to prosecution under S.S. 169 and 170‡ O. Cr. P. C. it should state with precision the particular offence or offences for the prosecution of which it gives sanction. 13 *W. R.* 25.

9. It is not necessary that the preliminary enquiry contemplated by S. 171 O. Cr. P. C. should be conducted in the presence of the accused. All the Courts (Revenue in this case) making the enquiry has to do, is to satisfy itself that there are *prima facie* grounds for sending the case for investigation to a Magistrate, and the Collector is not bound to dispose of a case of contempt of the lawful authority of a public servant, under S. 147 Act X of 1859, but it is discretionary with him to proceed under S. 171. O. Cr. P. C. 9 *W. R.* 3.

10. Reports of Police or Medical officers are not a sufficient sanction for prosecution under Bombay Act III of 1867. A complaint on oath or solemn affirmation is necessary. 7 *B.R. A. J.* 87.

11. A memorandum, under the signature of the Collector, sanctioning the prosecution, cannot be accepted in the place of a complaint so as to authorise the issuing of a summons. 5 *B. R.* 48.

12. Where a charge is made before a Sub-Registrar that a document registered before him is a forgery, the Sub-Registrar should cause the complainant to proceed under S. 66 Act XX of 1866. If the Sub-Registrar is also a Deputy Magistrate, he cannot transfer the case to himself as Deputy Magistrate, but should prosecute under S. 95 for an offence under Act XX. In such cases, there should be a formal charge drawn up against the accused, and the evidence must be taken in the presence of the accused. 13 *W. R.* 21; 4 *B. L. R. App.* 69.

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* See S. 471 N. Cr. P. C. † See S. 468 N. Cr. P. C. ‡ See S. 469 N. Cr. P. C.

13. In a case in which a false charge was brought, a Magistrate gave the accused (A) permission under S. 169, O. Cr P. C. to prosecute the complainant (B) of an offence under S. 211 P. C. The Magistrate tried the complaint of A as a complaint under S. 211, but he subsequently framed a charge against B under S. 182 P. C. and punished him under that section. Held, with reference to S. 168, * O. Cr. P. C. that the offences under S. S. 182 and 211 P.C. being offences under Chapter 14 of the O. Cr. P. C. the Magistrate was wrong in framing the charge under S. 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of B. 13 *W. R.* 67.

14. Held that a Magistrate cannot take cognizance of an offence under S. 174 P. C. committed against his own Court, but is bound under 171 O. Cr. P. C. to send the case for trial before another Magistrate. 13 *W. R.* 66 ; 5 *B. L. R.* 100.

15. A Small Cause Court Judge sent a case for investigation to the Head Assistant Magistrate under the provisions of S. 171 O. Cr. P. C. The Head Assistant Magistrate transferred the case for investigation to the Sub-Magistrate, who committed the case to the Sessions. Held, that the order of commitment was bad.

S. 173 O. Cr. P. C. is inapplicable to a case referred to a Magistrate under S. 171. 6 *M. R. App.* 41.

16. Where sanction to prosecute on a criminal charge under S. 169 O. Cr. P. C. was given in the case of only one prisoner out of two prisoners who were tried together, the High Court directed the release of the prisoner in regard to whom such sanction was not given. 15. *W. R.* 55.

17. The Local Government in sanctioning or directing (under S. 167 † O. Cr. P. C.) a charge against a public servant of an offence as such public servant has power to limit its sanction, by giving directions as to the person by whom, and the manner in which, the prosecution is to be preferred and conducted ; and a Court has no jurisdiction to entertain a charge against such public servant if preferred otherwise than in accordance with such directions.

Semble. The Local Government has power in the like case to direct that the accused public servant shall be tried before a specified tribunal being one having jurisdiction in that behalf.

Therefore, where the sanction directed that the accused public servant should be prosecuted upon such charges as Mr. C. might be prepared to prefer against him, and there was nothing on the record to show, nor did it otherwise appear, that Mr. C. had preferred any charge against, or taken any part in the prosecution of, the accused public servant, the High Court quashed the conviction of the accused, as having been without jurisdiction. 8 *B. R. A. J.* 32.

18. A Civil Court has no power to make an order, under S. 170 O. Cr. P. C, sanctioning a prosecution for an offence committed before the Court of the Principal Sadar Amin on the Small Cause side, that Court not being subordinate to the Civil Court. 6 *M. R. App.* 191.

SANCTION FOR PROSECUTION (*against Public Servants*)

19. The sanction of Government is required for the prosecution of any Judge if a complaint is made against him as Judge. 6 *M. R. App.* 22.

20. S. 167 O. Cr. P. C., requires that sanction to prosecutions therein mentioned shall be given before any such prosecution is commenced ; and, until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad.

Where a complainant charged a person who was one of the public servants men-

* See S. 467 N. Cr. P. C. † See S. 466 N. Cr.P.C.

tioned in S. 167 O. Cr. P. C. with committing acts which if committed by a private individual would have constituted the offence of extortion.

It was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution. 7 *B. R. A. J.* 61.

21. The sanction for the prosecution of a Kulkarni for making a false report as a public servant, required by S. 167 O. Cr. P. C., may be given by the Mamlutdar or by the Patil to whom such Kulkarni is subordinate. The sanction of the Collector is not necessary for that purpose. 7 *B. R. A. J.* 64.

ADULTERY (*prosecution for*)

22. Where the husband of a woman, with whom the accused was alleged to have committed adultery, professed himself unwilling to proceed with the prosecution, and the Assistant Session Judge thereupon ordered the accused to be discharged. The Court, in the exercise of its discretion, declined to interfere. 5 *B. R.* 27.

CONTEMPTS OF THE LAWFUL AUTHORITY (*sanction to prosecute for*)

23. Where a prosecution of an offence under Chapter 10 P. C. is instituted by an inferior ministerial servant under sanction of the authority of his official superior, the provisions of S. 168 of the O. Cr. P. C. are complied with. 11 *W. R.* 22.

24. The form of an accusation by a District Superintendent of Police under S. 193 P. C. does not preclude a Magistrate from framing the charge under S. 177* O. Cr P. C.; the sanction of the District Superintendent required under S. 168 of the latter Code to give the Magistrate jurisdiction, need not be express but may be implied. 16 *W. R.* 57.

DISOBEDIENCE OF LAWFUL ORDER (*sanction to prosecute for*)

25. Prosecution for non attendance in obedience to a summons was entertained without the sanction or complaint required by S. 168 O. Cr. P. C. Held that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt. 5 *B. R.* 38.

DOCUMENTS, FORGED (*sanction to prosecute for*)

26. A Collector to whom an application for a new stamp under cl. 2 S. 50 Act X of 1862, does not sit as a Court, Civil and Criminal, and the application therefore not being a document given in evidence in any proceeding of a Court, S. 170† O. Cr. P. C. does not apply to such a case. 11 *W. R.* 48; 3 *B. L. R. A. J.* 6.

27. S. 170 O. Cr. P. C. refers only to cases where a forged document has been put in evidence in a Civil or Criminal Court, in other cases, a Magistrate is competent *proprio motu* to enquire into allegation of forgery, and no sanction under S. 170 is necessary. 10 *W. R.* 5.

28. A specially registered bond was presented before the Small Cause Court Judge, for execution, under S. 53 of Act XX of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decreeholder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further enquiry, set aside the decree and sanctioned the prosecution under S. 170 O. Cr. P. C.: Held, that he was justified in sanctioning the prosecution but not in setting aside the decree. 3 *B. L. R. A. J.* 9.

FALSE EVIDENCE (*sanction to prosecute for*)

29. A Sessions Judge has no authority under the law to interfere with the order of a Magistrate allowing a prosecution for false evidence. 16 *W. R.* 59.

30. Where the Magistrate, before whom a witness gives false evidence, himself

* See S. 478 N. Cr. P. C. † See S. 469 N. Cr. P. C.

commits such witness for trial, his sanction of the prosecution, under S. 169 O. Cr. P. C. will be implied. 6 *B. R. A. J.* 54.

31. Where a person makes one statement before the Magistrate, and a directly different statement before the Civil Court, his commitment on an alternative charge, after the consent of the Civil Court has been obtained under S. 169 O. Cr. P. C. is strictly legal. 8 *W. R.* 79.

32. Where sanction under S. 170 O. Cr. P. C. to prosecute a person criminally for fabricating false evidence was not given, it was held that the error was not cured by S. 426 of that Code, and the person charged was ordered to be discharged. The sanction given by the Sessions Judge after the case was committed to him and the prisoner had pleaded to the charge is not a sanction contemplated by the law. 15 *W. R.* 45; 7 *B. L. R.* 26.

33. Where the Judicial Commissioner of Assam, sitting as Sessions Judge, certified, in his capacity of Judge of the chief Civil Court in Assam, that a charge of false evidence was entertained with the sanction of the District Court of Assam to which the Court of Moonsiff of Debrooghur before or against which the offence was committed was subordinate. Held that the sanction required by S. 169 O. Cr. P. C. had been given. 17 *W. R.* 55.

34. The object of the sanction required by S. 169 O. Cr. P. C., is to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given or on the part of a Court to which such Court is subordinate.

Where a Magistrate perused the paper of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner charging him with giving false evidence, it was held that the issue of the warrant was a sufficient sanction under S. 169 on the part of the Magistrate 16 *W. R.* 37.

35. The sanction accorded by a Civil Court under S. 169 O. Cr. P. C. in a case under S. 193 P. C. need not be more specific than a general sanction to prosecute for any false statement contained in the two depositions given. 11 *W. R.* 17.

36. A general sanction by a Judge to a prosecution forgiving false evidence under S. 193 P. C. and for false verification is not sufficient. The exact words upon which the prosecution is based, and the exact offences which the Magistrate is to investigate should be pointed out.

The verification of an application filed in the Civil Court, in which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application falls, not under S 120 Act VIII of 1859, but under the S. 209 of that Act and need not therefore be verified. 9 *W. R.* 58.

37. The Civil Court, in giving permission to prosecute under S. S. 169 and 170 O. Cr. P. C., should, in a case of forgery, state distinctly what the document is for which a prosecution is to be entertained. The particular act or acts of forgery, and, in a case of perjury, the particular words which constitute the perjury, should be specified. 10 *W. R.* 41.

38. Where a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under S. S. 463 and 471 P. C. (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing a charge under these sections, added a head of charge under S. 193 (giving false evidence: It was held that the Magistrate had no jurisdiction to commit the accused for trial on the last mentioned head of charge. 8 *B. R. A. J.* 28.

39. Sanction for the prosecution of the accused was accorded by an Assistant Session Judge in the following terms :—"There is no doubt whatever that Tai, Baji and Bala, these three persons, made before me certain statements contradictory of the statements which they had made before the Committing Magistrate. Therefore, if from such statements of theirs they may be liable to any charge, there is sanction from here" (*i. e.*, I give my sanction) "for their prosecution." Held that this gave sufficient sanction for the prosecution of the accused under S. 193 P. C. and that it is not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused is permitted to be prosecuted. 8 *B. R. A. J.* 24.

FALSE INFORMATION (*sanction to prosecute for*)

40. The sanction of a District Superintendent of Police to the prosecution of a charge of giving false information, not to such District Superintendent himself, but to an Assistant District Superintendent, is no sufficient sanction under S. 168 *of the O. Cr P. C. 2 N. W. P. R. 287.

41. Where a person was accused under S. 182 P. C. with having given false information to a head Constable, it was held that the provisions of S. 168 O. Cr. P. C. had been sufficiently complied with, inasmuch as the Lower Appellate Court stated in its judgment that "the case had been forwarded under S. 182 by the officer in charge of the District Superintendent's office",—the District Superintendent being the official superior of the head Constable. 19 *W. R.* 33.

LAND DISPUTES (*sanction to prosecute in case of*)

42. The sanction of the Civil Court is not necessary to a complaint of forcible dispossession by a party who was put into possession by the Civil Court, nor is the Magistrate limited in his action by the mistake of the complainant in citing S. 188 P. C. as the section under which the offence charged falls. 17 *W. R.* 10

LOTTERY OFFICE, KEEPING (*sanction to prosecute for*)

43. The sanction of the Local Government is necessary before a charge for keeping a lottery office under S. 10 Act XXVII of 1870 can be instituted. 15 *W. R.* 2, 6 *B. L. R. App.* 98.

PERJURY (*sanction to prosecute for*)

44. The discretion vested in a Civil Court under S. 169, † of sanctioning a criminal charge of perjury, is one that should be most carefully exercised. 6 *W.R.* 11.

45. An application under S. 169 O Cr. P. C., praying for sanction to institute a prosecution on a charge of perjury, should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed. 6 *M. R.* 92.

46. Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed, at any time, even after the order for commitment to the Sessions has been made. 3 *B. L. R. A. J.* 10.

47. It would be very undesirable for the High Court, except under very peculiar circumstances, to entertain in the first instance an application to authorise a prosecution for perjury. 17 *W. R.* 46.

48. A case of perjury or forgery alleged to have been committed in a case before a Civil Court before the 1st January 1862 can be dealt with only under the old Procedure Law (Act I of 1848) according to which the sanction of the Court before which the offence is alleged to have been committed, is necessary before criminal proceedings can be instituted. 5 *W. R.* 8.

PUBLIC JUSTICE (*sanction to prosecute for offence against*)

49. The prosecutor applied to a Civil Court for leave to prosecute, under S. 170‡

* See S. 467 N. Cr. P.C. † See S. 468 N. Cr. P. C. ‡ See S. 469 N. Cr. P. C.

O. Cr. P. C., a witness who had appeared before the Court. The Court granted the permission as applied for : The prisoner was tried for and convicted of an offence coming under the provisions of S. 169 O. Cr. P. C. Held that the mention of S. 170 in the permission to prosecute granted by the Civil Court might be treated as surplusage, and that the prisoner was rightlyconvicted. 4 *B. R. A J.* 28.

XVI. REFERENCE.

1. The High Court as a Court of reference can only deal with cases in which a sentence of death has been passed. 5 *N. W. P. R.* 131.

2. A prisoner, by claiming the "right of reference to the Sudder Court," does not lose all right to the opinion of the judge, and to appeal on the facts upon a trial by jury. 3 *W. R.* 58.

3. The taking by the Sessions Judge of a different view of the evidence from that taken by the Magistrate is not ground for a reference under S. 434 * O.Cr.P. C. 18 *W. R.* 39.

4. Where a case is referred to the HighCourt under S. 287 Act X of 1872, the Court is bound, under S 288 of the same Act, to go into the facts of the case, although the conviction was by the verdict of a jury. 19 *W.R.* 57.

5. A Sessions Judge, in referring a case under S. 434 O. Cr. P. C. should state reasons of his own for the reference, and not merely send up the reasons which may have been left by his predecessor. 10 *W. R.* 50.

XVII. REVIEW.

1. The Code of Criminal Procedure contains no provision for a review of an order passed in a Criminal Code. 7 *B. R.* 67; 3 *N. W. P. R.* 273 ; 17 *W. R.* 2.

2. Semble—No subordinate Criminal Court has the power to review its own judgment. 5 *W. R. F. B.R.* 61.

3. An order under S. 308 † O. Cr. P. C. is a judicial proceeding within the meaning of S. 404 of that Code and is, therefore, open to review by the High Court under its extraordinary jurisdiction, when an error in law is committed. 9 *B. R.* 160.

4. Where property of an absconding offender had been attached and declared to be at the disposal of Government, under S. 184‡O.Cr.P.C. and the offender was subsequently convicted under S. 174 P. C., and such conviction was upheld on appeal, held, the High Court had no power to make any order with respect to such property.

Where an order for the release of the property so attached had been obtained from the High Court on an *ex-parte* application, and on an incorrect statement of facts, the High Court, on the application of the Governm ent, cancelled such order. 9 *B. L.R.* 342.

XVIII. REVISION.

APPLICATION.

1. Application for revision by the High Court of an order passed in appeal by a Sessions Judge must be by motion. 16 *W. R.* 62.

BONA-FIDE.

2. On an application to the High Court, as a Court of Revision, to discharge

*See S.S. 295 & 296 N. Cr. P. C. †See S. 521 N. Cr. P. C. ‡See S. 172 N. Cr. P.C.

an order made by a Sessions Judge, under S. 435 *O. Cr. P. C., for the committal of certain accused persons for trial on a charge of dacoity: Held that as all that was done was done under a claim of right in good faith entertained by the accused, however erroneously, the charge could not be sustained. The order of the Sessions Judge annulled. 3 *M. R.* 254.

COMMITMENT (*power to order—of party discharged*)

3. The High Court has the power under S. 297 of Act X of 1872, not only to order the accused to be tried, but also to be committed for trial, if it appear to the High Court that the accused was improperly discharged; but from the absence of the words "order him to be tried" in S. 296, it seems that a Magistrate is not empowered under that section to direct a subordinate court to take further evidence in a similar case. 19 *W. R.* 56.

4. In a case in which the accused caused the death of a woman by beating, the medical officer who held the *post mortem* examination considered that death resulted from rupture of the spleen, but the Civil Surgeon said that no opinion of the cause of death could be formed.

The accused having been convicted of causing grievous hurt, and sentenced to six month's rigorous imprisonment by the Deputy Magistrate, the Magistrate considered that the accused, ought to have been committed to the Sessions on a charge of culpable homicide, but recommended that the High Court should enhance the sentence which had been passed to one of sufficient severity to meet the offence.

Held that the High Court could not deal with the case in the mode suggested, but under S. 297 N. Cr. P. C. the Court annulled the conviction by the Deputy Magistrate and directed that the accused should be committed to the Sessions on charges of culpable homicide and of grievous hurt. 20 *W. R.* 63.

5. The power conferred on a Court of Sessions by S. 435 O. Cr. P. C. extends only to offences not triable by a Magistrate and regarding which the accused has been discharged by the Magistrate. 11 *W. R.* 45.

6. Where a Magistrate of the District thinks that in any case tried by a Magistrate subordinate to him a failure of justice has occured, in consequence of the latter not committing the accused for trial to the Court of Session, he should refer the case, with an expression of his opinion to the Sessions Court, which has power, under S. 435 O. Cr. P. C., to direct a commitment to the Sessions Court for trial. 7 *B. R.* 72.

HIGH COURT (*as a Court of Revision*)

7. S. S. 407† and 419‡ O. Cr. P. C. are not applicable to a case, which the High Court, as a Court of Revision, thinks it right to take up. 5 *W. R. F. B. R.* 45.

8. S. 426§ O. Cr. P. C. allows no revision by the High Court in cases where, in the judgment of the Appellate Court, an accused person has not been prejudiced by an error or defect in the proceeding before the Magistrate (*e. g.*, as in this case, by the alteration of the charge and the omission of the Magistrate to record a separate defence). 17 *W. R.* 52.

9. The High Court can act as a Court of Revision, after it has acted as a Court of Appeal, in order to correct an error in law which could not be set right on appeal. 5 *W. R. F. B. R.* 45.

10. The questions which the High Court has to determine under S. S. 294 and 297 N. Cr. P. C. are questions of law or procedure which affect the decision, and not questions of fact depending upon conflicting evidence which has been considered by the judge, and upon which he has given his opinion adversely to the accused person. 20 *W. R.* 40.

*See S. S. 296 & 298 N. Cr. P. C. † See S. 272 N. Cr. P. C. ‡ See S. 280 N. Cr. P. C. § See S. 283 N. Cr. P. C.

11. The High Court, as a Court of Revision, cannot interfere with the findings of the Lower Appellate Court on questions as to the truth of the allegations contained in a libel or the *bona fides* of the accused, but upon such questions are bound by the findings of the Lower Court. 9 *B. R.* 451.

12. The High Court as a Court of Revision, has no power to interfere with or set aside a verdict of acquittal come to by a jury notwithstanding that such verdict has been come to in consequence of misdirection on the part of a Judge. The decision (5 W. R. 48) *refers only to cases tried by Assessors. 10 *W. R.* 14, 1 *B. L. R. A. J.* 8.

13. The verdict of a jury cannot be reversed by a Court of Revision, even if it be a verdict of "guilty." The only remedy for the prisoner in such a case is an appeal (which can only be a question of law), or an application to the Executive Government. Nor can a verdict, pronounced by a jury, of "not guilty" be reversed by the High Court on revision, and it is clear that no appeal lies from such a verdict. 3 *B. L. R.* 1.

14. Under exception 1 S. 300 P. C. the finding of a jury as to whether the offence of murder was committed under grave and sudden provocation sufficient to prevent the offence from amounting to murder is a question of fact with which the High Court cannot interfere. 13 *W. R.* 33.

15. In exercise of its powers as a Court of Revision, the High Court quashed convictions by a Joint Magistrate and Assistant Magistrate of certain persons for offences under S. 283 (danger, obstruction, or injury to any person in a public way or line of navigation) and S. 291 (repeating or continuing public nuisance) of the Penal Code, in which it appeared that the complainant's statement was not made on oath or before a Magistrate, and in which there was no statement of charge or evidence of any kind. 20 *W. R.* 55.

16. When there is evidence to be considered and weighed by the Court which is called upon to determine whether a person charged with an offence or offences is guilty or not guilty, an error as to the probative force, and effect of the evidence is one of fact and not open to correction except on appeal in the case of a conviction. Where the prisoners were charged with culpable homicide amounting to murder, and culpable homicide not amounting to murder and the Sessions Court convicted of the latter offence, and the High Court were of opinion that the evidence established the charge of culpable homicide amounting to murder: Held, that the High Court had not the power as a Court of Rivision under S. 405† O. Cr. P. C. to order a new trial. 5 *M. R. App.* 10

17. The High Court cannot interfere under S. 434 O. Cr. P. C. (Quere—can it interfere under S. 404 of that Code?)—in the case of a conviction before a Justice of the Peace under the 53 Geo. III, c. 155 S. 105. Such a case falls under S. 410‡ of the O. Cr. P. C. 14 *W. R.* 79.

18. The High Court as a Court of Revision cannot interfere with any finding of fact unless it arrives at a conclusion that there was no evidence whatever to support it, nor can it interfere in the case of a sentence passed by a Magistrate upon the ground that it is too severe, S. 405 O. Cr. P. C. applying only to cases coming from a Court of Sessions. 12 *W. R.* 47; 3 *B. L. R. A. J.* 50.

19. *Quere* (*by Mitter J.*) Whether the High Court, sitting as a Court of Revision under S. 404§ O. Cr. P. C., can enter into the question whether the view of the evidence taken by the Lower Appellate Court is correct or not? 13 *W. R.* 78.

JUDICIAL PROCEEDING.

20. The High Court is not empowered to interfere under the provisions of S

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* See 18th decision in page 107 of this volume. † See S. S. 294 & 297 N. Cr. P. C. ‡ See S. S. 79 & 80 N. Cr. P. C. § See S. 297 N. Cr. P. C.

404 O. Cr. P. C., until there has been a judicial proceeding by the Magistrate. 2 *N. W. P. R.* 441.

POWERS (*distinction between—given by S. S.* 296, 298 *and S.* 142 *N. Cr. P. C.*)

21. The powers given under S. S. 435 and 68 of the O Cr.P C. are distinct and independent powers,—the former providing for the revision of proceedings which have been already commenced, and the latter for the institution of proceedings *de novo*. 14 *W. R.* 65 ; 6 *B. L. R. App.* 67.

PROCEEDINGS (*power to call for*)

22. To justify the setting aside the proceedings on a trial, the error must be a material error within the meaning of S. 297 N. Cr. P. C. *material* in that section being equivalent to "unless such error or defect has occasioned a failure of justice" in S. 283. 19 *W. R.* 28.

23. Held that the High Court cannot interfere under S. 434 O.Cr.P.C in a case in which a Magistrate dismiss a complaint under S. 67 of that Code. 10 *W. R.* 49.

24. The High Court will not order a copy of the judge's notes of the evidence and proceedings upon conviction in a criminal case to be furnished to the prisoner on the ground of alleged probable hardship. A fair *prima facie* case as to the irregularity of those proceedings, or the illegality or impropriety of the sentence or order, must appear, before the Court will call for or direct a return of the record of the proceedings. 1 *M. R.* 138.

25. S. 294 N. Cr. P. C. is limited to sentences and orders as distincts from judgments. The former may be altered or set aside by the High Court for illegality or impropriety; but the latter cannot be interfered with (except in such cases where the law gives an appeal on the facts) unless it be shown that there has been some material error of law which renders the conviction illegal and improper in law. 20 *W. R.* 61.

26. There is no provision of the Criminal Procedure Code which makes it lawful for a Court of Session to call for examine the record of a case tried by a Sub-Magistrate, where no sentence or order has been passed thereon by the *immediately* Subordinate Court of the Magistrate. 3 *B. R.* 1.

27. A Sessions Judge ought not to call for a report from the Magistrate of the District in any case in which it is not competent to such Sessions Judge to call for the record and proceedings, (*e. g.*) in the case of a person tried by a Subordinate Magistrate who has appealed to the District Magistrate. In trials held by the Magistrate of the District or Magistrate F. P. in which the Sessions Judge can call for the record and proceedings, he has power also to call for a report. 6 *B. R. A.J.* 33.

28. A Magistrate F. P. though executively inferior to the Magistrate of the District,is not a "Subordinate Magistrate" within the meaning of Chapter 16 of the old Criminal Procedure Code, nor is he "immediately subordinate" to the District Magistrate, within the meaning of S. 434 of the same Code. 5 *B.R.* 69.

29. A Magistrate F. P. is not immediately subordinate to the Sessions Court, and, therefore, a Sessions Judge has no concurrent jurisdiction with the Magistrate of the District, under S. 434 of the Code of Criminal Procedure. His proper course, if he thinks that an illegal sentence or order has been passed by a Magistrate F. P., is to make a report to the High Court, which will then if it thinks fit, call for the proceedings, under S. 404. 7 *B. R. A.J.* 73.

REPORT TO HIGH COURT.

30. A Magistrate should under S. 296 N. Cr. P. C. exercise a discretion as to whether he will refer a case to the High Court, and is not bound to refer every case in which he may detect an error. 20 *W. R.* 40.

31. When a Magistrate, having called on the prisoners for their defence, takes the evidence of a witness and finally acquits them of the charge, the High Court has no power to interfere upon a reference made to it under S. 296 N. Cr. P. C. 19 *W. R.* 55.

32. In a case in which the Magistrate referred the proceedings to the High Court with a recommendation that they should be set aside, because the sentence was inadequate, it was held that it is not merely because circumstances occur to the Magistrate which would render necessary a more severe sentence or a different charge that the High Court should interfere. There must be matter on the record of the case showing that the charge has been improperly framed, or that the sentence passed is clearly inadequate to the offence. 20 *W. R.* 22.

REVIVAL (*of case*)

33. A Magistrate of a district has power to order a Subordinate Magistrate to revive a case in which the accused had been discharged. 20 *W. R.* 46.

34. Where an accused person has been discharged by a Magistrate under S. 250 *O.Cr.P.C., after enquiry into the case, the Court of Session cannot under S. 435 O. Cr. P. C. remand the case for further enquiry. 9 *B. L. R.* 337.

35. The Deputy Magistrate adjourned the case to the 21st on which day he ordered the case to be dismissed for non-attendance of the complainant, but on the following day cancelled that order and revived the case on the ground of his having dismissed the case by mistake in ignorance of the complainant having petitioned for an adjournment by reason of sickness. The Magistrate on appeal reversed the order of the Deputy Magistrate. As the order of the Deputy Magistrate was manifestly wrong, the High Court set aside the whole of the proceedings and restored the case to the position in which it stood before the 21st. 8 *W. R.* 5.

36. A Magistrate of a District has power under S. 435 O Cr. P. C. of dealing with cases triable by a Court of Sessions or by a Magistrate of a District, in which an accused has been discharged by any Magistrate, and with cases in which a complaint has been dismissed whithout enquiry, provided that the proceedings were held by a Subordinate Magistrate; but *quere* whether in such cases he ought to order a commitment to the Sessions or a new trial before another Magistrate. 14 *W. R.* 8; 5 *B. L. R. App.* 48.

XIX. SECURITY FOR GOOD BEHAVIOUR.

BOND (*security*)

1. Althougth the form of security-bond given in the form (F) of the Appendix combines two bonds, namely, one for the principal, and one on the part of the sureties, the provisions even of S. 300 † would be complied with if these two bonds were upon two pieces of paper instead of one. 19 *W. R.* 29.

DEPOSIT (*instead of security*)

2. The Magistrate may require the accused to deposit money, in lieu of security, for his good behaviour. 7 *W. R.* 30.

IMPRISONMENT (*in default of security*)

3. With reference to S. S. 301 ‡ and 409 § after the expiration of the term of confinement in default of security, a second security cannot be demanded except upon some new proof of bad livelihood or that a person is not capable of following an honest calling. 6 *W. R.* 18.

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* See S. S. 215 & 216 N. Cr. P. C. † See S. 509 N. Cr.P.C. ‡ See S. 510 N.Cr.P.C. § See S. S. 267 & 269N. Cr.P.C.

4. Where a Magistrate required security from persons for their good behaviour under S. 296, *and in default sentenced them to six months rigorous imprisonment, held that the order was illegal, S 301 †requiring that they should be committed to prison until they furnish the security demanded. In fixing the amount of security the Magistrate should not go beyond a sum for which there is a fair probability of the defendant being able to find security. 4 *M. R. App.* 47.

PENALTY (*recovery of—from surities*)

5. Where sureties who were required to show cause under S. 305 ‡O. Cr.P.C., why the bond executed by them should not be put in force, failed to establish by evidence the statements which they made, it was held that the order putting the bond in force was a proper one. 19 *W. R.* 29.

REVISION.

6. Orders passed by Sessions Judges in confirmation of orders by Magistrates calling upon parties to give security for their good behaviour, though not subject to appeal, are open to revision by the High Court under S. 404 6 *W. R.* 18.

SECURITY.

7. If a Sessions Judge be of opinion that a person acquitted by him ought to give security for future good behaviour, he should discharge him, and inform the Magistrate of his opinion, that security should be taken, leaving the Magistrate to take the necessary steps for that purpose, and the Sessions Judge should not send the party in custody to the Magistrate. 1 *B. R.* 91.

8. To justify a Magistrate in taking action under S. 296 O. Cr. P. C. there must be evidence before him legally sufficient to establish the fact that the person charged is a person of the character described in the section. 2 *N. W. P. R.* 455.

9 In proceedings taken against a person to obtain security for good behaviour under S. 296 O. Cr. P. C. the examination of the witnesses must be taken in the presence of the accused person, who should be permitted to cross-examine them. 2 *N. W. P. R.* 406 ; 4 *M. R. App.* 23.

10. Previous convictions for a simple breach of the peace are not sufficient to justify a Magistrate in demanding security under S. 296 O. Cr. P. C. Nor is repute, that a person is one of the leaders of a gang of petty bullies and extortioners, sufficient to justify a conviction under S. 297 §of the same Code, unless in addition it be shown that he is of a character so desperate and dangerous as to render his release, without security of one year, hazardous to the community. 4 *N. W. P. R.* 117.

11. Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour under S. 296 O. Cr. P. C., for a period of one year, his imprisonment in default of providing such security must commence to run from the date of the order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner. 3 *N. W.P. R.* 126 & 127.

12. A direction annexed to a sentence of imprisonment under S. 448 P. C. that the convict be brought up, at the expiration of the sentence, in order that he may give security for good behaviour for the period of one year reversed: as not being authorised by S. 296 O. Cr. P. C. 3 *B. R.* 39.

13. Where a person is adjudicated to be a person of notorious bad character under S. 296 O Cr. P. C., after having been tried for dacoity, the evidence taken in the trial for dacoity should not be used against the accused with reference to the accusation under S. 296, which evidence should be taken independently. 13 *W. R.* 24.

14. In an enquiry under S. 306 §O.Cr. P.C. as to proceedings against persons

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* See S. 503 N. Cr. P. C. † See S. 510 N. Cr. P. C. ‡ See S. 514 N. Cr. P. C.
§ See S. 505 N. Cr. P. C. $ See S. 515 N. Cr. P. C.

required to give security for good behaviour, a Magistrate has no power to use the information which the Police may have obtained as evidence in the case. 11 *W.R.* 35.

SECURITY (*for more than one year*)

15. By S. 297 O. Cr P.C. the Court can deal with the case of a prisoner who does not appeal and is authorized to pass such "order" sentence, or judgment as it thinks fit. 19 *W. R.* 57.

16. S. 297 O. Cr. P. C. applicable only to persons of a violent or turbulent character, and not to taking security for good behaviour 6. *W. R.* 6.

17. Prisoner acquitted of attempt to murder, but directed to be proceeded with by the Magistrate under S. 297, with a view to security being taken for his future peaceable behaviour. 3 *W. R.* 23.

18. Where a person, under S. 297 O. Cr. P. C. is ordered to provide security for his good behaviour, the order should, under S. 300 O. Cr. P. C. state the number of sureties required from the defendant.

The object of the law as to security for good behaviour is, that *sureties* shall be responsible for the good behaviour of the person called upon to provide security, not that a deposit be made in *cash*. 2 *N. W. P. R.* 295.

XX. TRIALS.

ACQUITTAL.

1 The order for the release of the accused as *nirdosh* (guiltless) was held to be an acquittal, and not a discharge, and therefore to have exempted them from a second trial for the same offence. 18 *W. R.* 10.

2. Where a prisoner is acquitted of the offence charged, the Court ought not to order the property in respect of which the offence was charged, to be given to the prosecutor 5 *W. R.* 55.

3. A prisoner is entitled to be discharged from custody immediately on the judgment of acquittal being pronounced, and no formal warrant is necessary. 5 *M. R. App.* 2.

SESSIONS TRIALS (*acquittal in*)

4. After an accused person has been acquitted under S. 255 O. Cr. P. C., it is not competent to the Sessions Judge to interfere under S. 435 of the same Code. 9 *B. R.* 170.

SUMMONS CASES TRIABLE BY MAGISTRATES (*acquittal in*)

5. A Magistrate cannot decide the case of a prosecutor without examining his witnesses. If, upon such trial, he finds that the prosecutor has no right to bring a criminal charge, he should acquit the prisoner on that ground. 7 *W. R.* 45.

6 Where the Magistrate dismissed a case in the exercise of a judicial discretion, such dismissal, by, S. 212 Act X of 1872, has the effect of an acquittal of the accused person. The Court has no jurisdiction to entertain any application to interfere with the acquittal of an accused person, except the application be made either by Government, or under the sanction of Government. 19 *W. R.* 52.

7. Certain persons having been charged under S. 352 P.C., the hearing of the case was adjourned to a certain day on which complainant having reported that his

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* See S. 509 N. Cr. P. C, † See S. 220 N. Cr. P. C.

witnesses were present, they were called but did not reply. The accused pleading "not guilty" the Deputy Magistrate acquitted him under S. 272* O. Cr. P. C.

The Sessions Judge having referred to the High Court under S. 434,† reported that the complainant had been present agreeably to order on 5th April, had continued to be present with his witnesses from 5th to 9th April, and that the trial had been adjourned to suit the convenience of the Deputy Magistrate, and that complainant's plea for the temporary absence of his witnesses on the day of hearing was that, after attending from 8 to 10 oclock, they had gone to the bazar. The High Court under the circumstances quashed the proceedings of the Deputy Magistrate, and directed a re-hearing, if complainant wished it. 18 *W. R.* 60.

8. The High Court has no power to set aside an order of a Magistrate acquitting an accused, nor can a Sessions Judge order the Magistrate to commit an accused whom the Magistrate has acquitted, on a charge which is triable by the Magistrate,-such as grievous hurt. 11 *W. R.* 14.

WARRANT CASES TRIABLE BY MAGISTRATES (*acquittal in*)

9. A Judge should clearly acquit a prisoner of murder when so charged, instead of merely finding him guilty of culpable homicide not amounting to murder. 5 *W. R. F. B. R.* 2.

10. Two persons were committed for trial, the first prisoner for adultery, enticing away a married woman, and theft, and the 2nd prisoner for abetment of the enticing away and theft. The first prisoner was acquitted of the charges of adultery and enticing away. The case for the prosecution was that the prosecutor's wife left her husband's house in company with the first prisoner and that previous to her departure she, by means of false keys supplied to her by the 2nd prisoner, opened the room where the family jewels and money were kept and removed them. The jewels were deposited with the 2nd prisoner for safe custody. Part of the money was handed to the 1st prisoner: Held, that notwithstanding the acquittal, the prisoners were not entitled to be discharged without trial on the charge of theft. 5 *M.R.App.* 23.

11. An express finding by the Sessions Judge that the case does not fall under any of the clauses of S. 300 is tantamount to an acquittal of murder; and after such an acquittal, the High Court cannot, either as a Court of Appeal or a Court of Revision, look at the evidence for the purpose of reversing the acquittal and of convicting the prisoner of murder. 8 *W. R. F. B. R.* 47.

12. Where a prisoner is released by the Court of Sessions on the ground that the proceedings had in his case were illegal and irregular, there is no bar under S. 55 ‡ O. Cr. P. C. to his being subsequently tried and convicted of the same offence. 13 *W. R.* 42.

AFFIDAVIT.

13. Though affidavits may be used to show a want of jurisdiction in a Magistrate, even though such affidavits contradict for this purpose the finding of the Magistrate, they cannot be used as affording materials for reviewing the Magistrate's decision on the merits. 10 *B. R.* 102.

CHARGE.

14. Persons not formally charged or put on their defence cannot legally be convicted. 6 *W. R.* 90.

15. Unnecessary allegations in a charge may be rejected as surplusage. 4 *B.R.* 17.

16. A charge properly laid under the Penal Code should be investigated, even if the case be one in which a civil action will lie. 10 *W. R.* 40.

17. Proper course laid down for a Judge to adopt when the facts proved do not support the charge as laid. 7 *B. R. A. J.* 81.

* See S. 211 N. Cr. P .C. † See S. S. 295 & 296 N. Cr.P.C. ‡ See S. 460 N.Cr.P.C.

18. Where a Deputy Magistrate did not draw up a charge in accordance with S. 250* O. Cr. P. C. but gave the accused clearly to understand the nature of the charges made against them, the irregularity was held to fall within S. 403 of that Code. 10 *W. R.* 7.

19. The want of any charge of an attempt to commit rape is a defect which is cured by S. 283 N. Cr. P. C. 20 *W. R.* 51.

ALTERNATIVE (*charge*)

20. In order to make an alternative charge of two or more offences regular under S. 242† of the O. Cr. P. C., the offences specified in such alternative charge must all be offences against the Indian Penal Code. Therefore, a charge against a prisoner either of "criminal breach of trust" under S. 109 of the Penal Code., or of "undue exaction of money" under S.16 of Reg.XVII of 1827,is irregular.

An offence under the latter section, being punishable by imprisonment for 7 years, is triable exclusively by a Court of Session, under the provisions of the schedule of the Code of Criminal Procedure Amendment Act VIII of 1869, last page. 8 *B. L. A. J.* 115.

21. When a prisoner is apprehended eight days after a conviction, with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form. 5 *W. R.* 66.

22. It being impossible to decide which of the prisoners' two statements was false and which true,the prisoners were convicted on the alternative charge. 1 *W. R.* 15.

AMENDMENT (*of charge*)

23. A Judge can alter or amend a charge at any stage of the trial. 1 *W. R.* 39.

24. Although a Sessions Judge has power to alter or amend a charge, he cannot add an entirely new charge which is not even cognate to the charge on which an accused person has been committed for trial. 3 *N. W. P. R.* 337.

25. Amendments in a charge ought to be made formally and should appear on the face of the record. 9 *W. R.* 11.

26. The Court, under S. 1 of the Criminal Law Amendment Act XVIII of 1862, has power to order the amendment of a charge involving a change in the ownership of stolen property, provided such amendment does not prejudice the accused in his defence upon the merits.

Where it is doubtful whether an amendment of a charge will or will not prejudice the accused in his defence upon the merits, the amendment ought not to be made.

Where the accused was charged with receiving stolen goods from the wife of the prosecutor, the property in the goods being laid in the prosecutor, and the charges were amended by laying the property in the prosecutor jointly with his mother, it was held that such amendment ought not to have been made. 6 *B. R.* 76.

27. On a trial by jury the Sessions Judge has no power to alter the charge after the delivery of the verdict. 5 *B. R.* 9.

28. After the finding and discharge of the Assessors the Judge altered the charge to culpable homicide not amounting to murder, and convicted the accused on that charge. Held that the conviction was illegal. 1 *W. R.* 40.

29. A jury may ignore the graver charges on which a prisoner is tried, and find him guilty of a lesser one on the evidence. 3 *W. R.* 41.

30. The objection that the Sessions Judge was not justified in amending the charge after the case had been decided, but that he should have, if he thought a fur-

* See S. S. 215 & 216 N. Cr. P. C. † See S. 455 N. Cr .P. C.

ther charge necessary, directed a new trial, was overruled as coming clearly within the purview of S. 426* of the O. Cr. P. C., there being no contention that the accused had been in any way prejudiced, or that the punishment awarded for the theft by the Joint Magistrate was more than could have been awarded for abetment of that offence. 18 *W. R.* 8.

DISMISSAL (*of charge*)

31. A charge of assault and theft should not be dismissed for default of complainant's attendance. 1 *W. R.* 25.

32 A Magistrate is not authorized to dismiss a case because he finds, in course of investigation, that the facts disclose an offence other than, or in addition to, that complained of; but is bound to adjudicate on the original charge. 8 *W. R.* 82.

DISMISSAL OF CHARGE (*effect of*)

33. The dismissal by one court of the charge of riot instituted by the Police, is no bar to the trial by another court of a charge of criminal trespass instituted by a third person although the two charges may substantially refer to the same occurrences. 6 *W. R.* 51.

34. A dismissal by one court of a charge of riot against A may be a bar to A's trial by another court on the same charge, but it does not extend to other persons not then before the court which ordered the dismissal. 6 *W. R.* 51.

FALSE EVIDENCE (*charge in case of*)

35. In a case of giving false evidence, the charge should show the particular matter in respect of which the accused is put upon his trial: and only so much of the prisoner's statements ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution. 5 *W. R.* 71; 9 *W. R.* 25.

36. In charges of false evidence under S. 193 P. C., the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false. 8 *W. R.* 95.

37. A person accused of giving false evidence in a stage of a judicial proceeding is entitled to have the specific charge made against him tried independently of a like charge against another person. 5 *B. R.* 55.

38. Where a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge. 8 *B L. R. App.* 25.

39. A charge under S. 193 P. C. should show what the statement is which the accused persons or any of them are alleged to have made, and it should disclose the exact date on which the offence charged was committed, and the court or officer before whom the false evidence was given. 16 *W. R.* 47.

FRAMING (*of charge*)

40. In cases of giving false evidence a separate charge against each prisoner must be framed and separate trial held of each charge. 3 *M. R. App.* 32.

41. In framing a charge of defamation under Criminal Procedure Code, it is not necessary to negative the exceptions contained in S. 499 P. C. 9 *B. R.* 451.

42. A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable, as required by S.S. 234† & 237‡ of the O. Cr. P. C. 9 *W. R.* 33.

43. Where several offences are charged under the same section, the Commit-

* See S. 283 N. Cr. P. C. † See S. 439 N. C. P. C. ‡ See S. 105 Act I of 1872.

ting Magistrate should frame the charge so as to contain a separate head for each offence. The omission of the Magistrate to do this may be remedied by the Sessions Judge exercising the powers of amendment contained in S. 244 O. Cr. P. C. 7 *W. R.* 8.

44. When a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge either of forgery or of using as genuine a false document, or of abetting forgery. 6 *W. R.* 20.

45. In framing a charge for giving false evidence under S. 193 P. C. the charge should be precise, and where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. 9 *W. R.* 14.

46. Held that the omission to prepare a charge did not vitiate the proceedings; and conviction upheld. 5 *B. R.* 40.

HURT, CAUSING (*charge in case of*)

47. The charge and finding in a case of causing hurt under S. 324 P. C. need not contain a negation that the hurt was caused on grave and sudden provocation. 4 *M. R. App.* 5.

MISCHIEF (*charge in case of*)

48. In a case of mischief by fire with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling. 8 *W. R.* 30.

OFFENCE (*charge to state*) *N. Cr. P. C. S.* 439.

49. That the facts proved would constitute an offence under a section of the Penal Code, seems to be no reason for quashing a conviction under the special law Act V of 1861. 8 *W. R.* 55.

50. The refusal to give a stamped receipt for money paid not being in itself an offence at law, to make a false charge against a party of refusing to give such a stamped receipt is not an indictable offence. 1 *B. R.* 92.

51. A Sessions Judge has no power to try a prisoner who has been committed for trial on no specific charge. 9 *W. R.* 23.

52. A Magistrate should himself state distinctly what charge an accused person has to meet, and ought not to leave that to his amlah. 16 *W. R.* 43.

53. One count charging each specific offence and describing it with a reasonable degree of certainty, insufficient. 5 *W. A.* 7.

54. A charge should distinctly set forth the particular offence in respect of which the accused either omitted to give information, or gave information which he knew to be false; and it should appear precisely what his duty was in the matter. 8 *W. R.* 37.

55. A charge under S. 451 P. C. must charge the accused with committing house-trespass with intent to commit some specific offence punishable with imprisonment. 16 *W. R.* 53.

56. The mere absence of any formal charge of using insulting language in addition to the charge of criminal trespass, is no sufficient illegality to warrant an annulment of the proceedings; the said language having been complained of by the complainant at the first. 3 *W. R.* 28.

57. A charge alleging a previous conviction need not show the extent of the former punishment. 4 *M. R. App.* 11.

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*See S. 445 N. Cr. P. C.

58. Under S. 439 N. Cr. P. C., if it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous punishment, in the charge. If it is omitted, it may be added to the charge, at any time previous to the sentence being passed, but not after. 19 *W. R.* 41.

COGNATE (*offence*)

59. Held, when more than one offence is proved, it is not proper to convict only of one and to acquit of the other, although the offences may be cognate. 5 *B. R.* 3.

60. The offence of making a false charge, and the offence of intentionally giving false evidence, are not cognate offences or parts of the same offence, but may be punished separately. 7 *W. R.* 59.

COMPOUNDING (*offence*)

61. The offence of adultery may be compounded. 4 *W. R.* 31.

62. The offence of voluntarily causing hurt, under S. 323 P. C., is one which may lawfully be compounded, and the withdrawal from the prosecution in such a case is, therefore, permissible under S. 188 N. Cr. P. C. 10 *B. R.* 68.

LUMPING (*of offences*)

63. Three separate offences should not be lumped together in a single charge, but each offence should form a separate head of charge, with reference to which there should be a distinct finding and a distinct sentence. 3 *N. W. P. R.* 314.

64. There had been a riot and fight between two factories,—and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other party (B) were charged with causing grievous hurt to the leader of A,—Held that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had one common object. 8 *W. R. F. B. R.* 47.

65. The two offences of robbery and of voluntarily causing hurt, when combined, are punishable under S. 394 alone, and not under S. 392 and 394 P. C. 2 *W. R.* 1.

SEPARATE (*offences*)

66. It is wholly incorrect to charge a number of persons jointly, with intentionally giving false evidence under S. 193 of the P. C. 16 *W. R.* 47.

67. The commitment and trial of several persons on separate charges, each man's statement forming a distinct offence, approved 7 *W. R.* 51.

68. The offence of rioting armed with deadly weapons and stabbing a person on whose premises the riot takes place, are distinct offences and punishable as separate offences under S. S. 448 449, and 324 of the P. C., S. 149 being read as a proviso to S. 148 P. C. 7 *W. R.* 60.

69. In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section, which have been clearly proved against them. On conviction of each of these separate charges, a separate sentence on each conviction should be passed, with a direction (under S. 317* O. Cr. P. C.) that each should take effect on the expiry of the next prior sentence. 20 *W. R.* 70.

70. Held, on the facts of this case, that a party (A) who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm and resisted his carrying away a pony which A was charged with having misappropriated, was guilty of separate offences under S. S. 353 and 183

* See S. 537 N. Cr. P. C.

penalties awarded for each offence.

On a reference by the Session Judge, under S. 434* O. Cr. P. C. *Held that it was an irregularity, on the part of the* Assistant Session Judge, not to pass a *separate sentence under each independent head of the charge; but that it was not an error or defect in consequence of which the High Court could reverse or alter the sentence, under* S. 426† of the Code. 2 *B. R.* 391.

72. *Held that it was not illegal to convict prisoners of mischief, as well as of theft; the offences charged being that they had cut down Government trees without leave, and appropriated them.* 2 *B. R.* 392.

73. If knowing a girl has been kidnapped a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. 3 *N. W. P. R* 146.

74. Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. 6 *W. R.* 83.

75. An accused who threatened three witnesses was convicted and sentenced to four month's imprisonment for the threat to each witness—in all to one year. Held that if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust. 9 *W. R.* 30.

SINGLE (*offence*)

76. The practice of dividing the facts which constitute parts of one offence into several minor offences condemned. 13 *W. R.* 42.

77. Where substantially only one offence has been committed the several acts which taken together constitute that offence cannot legally be treated as separate offences—and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence. 4 *B. R.* 12, 12 *W. R.* 2.

78. Where a person, though charged under different sections of the Penal Code, was convicted of what was substantially but a single offence :—Held that it was not lawful for the Magistrate who tried him to pass a sentence of imprisonment, as for separate offences under S. 46‡ O. Cr. P C., exceeding in the aggregate the punishment which it was competent for the court to inflict on conviction of a single offence.

Held, also, that, as the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished, as afrer a previous conviction, unde. S. 75 of the Penal Code. 2 *B. R.* 126.

79. The making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the depositions. 6 *M. R. App.* 27.

80. Where a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false. 5 *B. R.* 49.

*See S. S. 225 & 296 N. Cr. P. C. † See S. 283 N. Cr. P. C. ‡ See S. 71[illegible] N. Cr. P. C.

81. A person tried and acquitted on a charge of using criminal force under S. 352 (which includes the offence of battery) cannot be tried, in respect of the same criminal matter, on a charge of hurt. 16 *W. R.* 3.

82. Where the accused were convicted under S. 147 P. C. of rioting and also under S. 353 P. C. of using criminal force to a constable who went to arrest them, the High Court set aside the conviction under the former section. 16 *W. R.* 45.

83. There cannot be a conviction both of "rioting" and of "being members of an illegal assembly". The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. 1 *W. R.* 7.

84. Theft is the sequel of, and cannot be separated from, house-breaking. A cumulative sentence of 3 years' imprisonment was held to be illegal in such a case. 2 *W. R.* 63; 5 *W. R.* 49; 6 *W. R.* 39; 49; 92.

85. Where in a case in which a prisoner was convicted of theft and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it. 1 *W. R.* 27; 2 *W. R.* 63; 11 *W. R.* 12.

86. When stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other *e. g.* length of time, or distance. 1 *W. R.* 48.

87. House trespass and mischief not being separate offences, but being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite. 3 *W. R.* 54.

88. The offences specified in S. S. 411 and 414 of the Penal Code cannot be considered as two distinct offences so as to allow of the procedure of S. 46 O. Cr. P. C. being adopted. 4 *M. R. App.* 14.

89. A prisoner cannot be convicted under S. 411 P. C. for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted, under S. 409 P. C. of having obtained possession by committing criminal breach of trust. 4 *N. W. P. R.* 312.

90. A person convicted of dacoity under S. 395 P. C. cannot be convicted also of dishonestly receiving stolen property under S. 411, or of receiving property transferred by commission of dacoity under S. 412 P.C. when there is no evidence of the commission of more than one offence. 13 *W. R.* 42.

91. A person convicted of rioting should not be convicted of hurt or grievous hurt caused to himself. 5 *W. R.* 19.

92. The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed. 7 *W. R.* 13.

93. The prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt),—Held that it was not necessary to pass a separte sentence for the offence of house-trespass. 2 *W. R.* 29.

PERJURY (*charge of*)

94. On a charge of perjury, each of the accused should be separately charged and tried in respect of the alleged perjury. 2 *N. W. P. R.* 21.

95. A person accused of perjury is entitled to have the specific charge made against him tried quite independently of a like charge against another person and

the Court of Sessions must find judicially whether all, or, if not all, which of the particular charges of perjury, where there is more than one charge, is made out against each prisoner. A conviction for perjury, moreover, should not be sustained on the bare testimony of one witness. 9 *W. R.* 66.

RECEIVING STOLEN PROPERTY (*charge in case of*)

96. A charge, under S. 411 P. C., of dishonestly receiving stolen property, should state that the articles found in possession of the accused were the property of A. B, the owner thereof. 1 *B. R.* 95.

WITHDRAWN (*charge*)

97. The truth or falsity of a withdrawn charge need not be investigated. 1 *W. R.* 1

CONVICTION.

98. A conviction, upon no evidence is wrong in point of law. 6 *W. R.* 92 ; 7 *W. R.* 6 ; 15 *W. R.* 46.

99. A conviction under the Indian Penal Code, and also under a special law in respect of one and the same offence, is illegal. 5 *N. W. P. R.* 49.

100. Where a prisoner was properly convicted on the evidence of illegally seizing cattle, but was sentenced under the old law (Act III of 1857) when that Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence, as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done. 16 *W. R.* 12.

101. Unsatisfactory conviction for perjury, where the evidence was balanced as to numbers, and where the story for the prosecution was improbable reversed. 6 *W. R.* 11.

102. A conviction under S. 181 P. C. is good, though the offence fall within S. 193. 4 *M. R App.* 18.

103. When an offence under S. 193 P. C., is established, a conviction under S. 181 is illegal.

When the accused made on solemn affirmation a statement before an Income tax Commissioner which statement the accused knew, or had reason to believe, to be incorrect. It was held that such statement amounted to the offence of giving false evidence in a judicial proceeding, under S. 193 P. C., and was, therefore, not cognisable by a F. P. Magistrate, as it could not be treated as constituting an offence triable under S. 181 P.C. (making a false statement to a public servant). 8 *B. R. A. J.* 21.

DEFENCE.

104. A sentence of imprisonment passed on a woman who was never put on her defence, quashed as illegal. 6 *W. R.* 17.

105. The Court quashed the sentence which was passed upon a prisoner who had not been asked if he had any witnesses to call, although he was tried at the same time with others who had been so asked. 10 *W. R.* 97.

106. In a case in which the accused person cited a number of witnesses, and the evidence already before the Magistrate was contradictory, it was held that the Magistrate should have summoned and examined the witnesses whom the accused wanted to call. 15 *W. R.* 87.

107. Where the Subordinate Magistrate convicted certain persons without allowing them a proper opportunity for the summoning and attendance of witnesses named for the defence, the High Court quashed the conviction and directed the Subordinate Magistrate to re-hear the case 5 *M. R. App.* 27.

108. The High Court in the exercise of the powers vested in them by S. 405

O. Cr. P. C. set aside the conviction of a prisoner in a case in which the Magistrate refused to grant him copies of papers which more necessary for his defence. A Magistrate acts contrary to law when he determines on an application by a prisoner for copies of documents required for his defence, whether the documents are necessary or not. 14 *W. R.* 77 ; 6 *B. L. R. App.* 59.

109. The High Court will not interfere upon a mere statement of a prisoner, unsupported by any evidence whatever, that the Magistrate who convicted him did not record the whole of the defence he wished to make. 8 *W. R.* 57.

ENQUIRY INTO CASES TRIABLE BY SESSIONS COURT (*witnesses for defence in*)

110. Prisoners should name their witnesses at the commitment. 17 *W. R.* 58.

111. In the case of a charge of an offence triable by the Court of Session alone, the Magistrate is bound to summon the complainant's witnesses. 8 *W. R.* 4.

112. The Magistrate, when he has prepared the charge is bound to read it to the accused, and to ask him if he wishes to have any witnesses summoned to give evidence on his behalf at the Sessions. 2 *W. R.* 50.

113. Where a prisoner, under S. 227* O. Cr. P. C., gives in a list of the witnesses he wishes to summon, after his case has been committed, the Magistrate is bound to exercise his discretion upon the point, and to state whether he will summon the witnesses or not, and he ought to state his reasons for not doing so. If he thinks the witnesses were included in the list for the purpose of delay, he should proceed under S. 228† of the Code. 16 *W. R.* 14.

114. Where an accused has been committed for trial to the Sessions and has given in a list of his witnesses, the Magistrate is bound, subject to S. 228, O. Cr. P. C. to summon the witnesses to appear before the Sessions Court. S. 227 is imperative and does not leave it open to the Magistrate to prevent a prisoner from reserving his defence for the Session—while S. 207‡ merely gives a Magistrate a discretion to take evidence for the defence. 13 *W. R.* 1.

115. A prisoner who was about to be committed to the Sessions Court presented to the Magistrate a list of witnesses whom he desired to have summoned to give evidence on his behalf at the trial, and on being asked by the Magistrate why he desired to summon the witnesses, the prisoner declined to state his reason ; Held, that the Magistrate was at liberty to decline to summon the persons named in the list on the prisoner declining to satisfy him that they were material witnesses ; but the Magistrate ought to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the prisoner his readiness to issue summonses on that amount being deposited.

The High Court called for the record for the purpose of seeing, whether any of the persons named in the list were likely to be able to give material evidence. 4 *M. R.* 81.

SESSIONS TRIALS (*defence in*)

116. According to S. 375§ O. Cr. P. C. a prisoner is not entitled of right to have witnesses not named by him before the Magistrate, summoned at the Sessions trial. 3 *W. R.* 29.

117. Having regard to S. 375 O. Cr. P. C. a Magistrate is bound to take steps to procure the attendance of all the witnesses mentioned by the accused in the list delivered to the Magistrate by whom he was committed. 15 *W. R.* 34.

118. Under S. 372$ O. Cr. P. C. the accused should be asked, at the end of the case for the prosecution, to produce his evidence; and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine in his defence. 12 *W. R.* 22.

*See S. S. 199 & 200 N. Cr. P. C. † See S. S. 200 & 359 N. Cr. P. C. ‡ See S. 357 N.Cr.P.C. § See S. 363 N. Cr. P. C. $ See S. 251 N. Cr. P. C.

119. Under S. 372 O. Cr. P. C. an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close Where, therefore, one witness for the prosecution, was recalled after the prisoner had made his defence and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial. 13 *W. R.* 15.

120. It is irregular to allow a witness to be examined on behalf of the prosecution, after the prisoner has made his defence, when the witness is not a witness to contradict any new case set up by the prisoner. Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence in allusion to the evidence of the witness, the High Court refused to set aside the conviction, having regard to S. 439* O. Cr. P. C. 13 *W. R.* 36.

121. When a prisoner makes a distinct defence and calls witnesses to prove it, instead of dismissing the witnesses at once on their saying they know nothing in the prisoner's favor, a Judge should put a few questions to them in detail to see if there is any truth in the prisoner's statement or any part of it. 11 *W. R.* 9.

SUMMONS CASES TRIABLE BY MAGISTRATES (*witnesses for defence in*)

122. In a case under Chapter 15 O. Cr. P. C. it is incumbent on the accused either to produce their witnesses, or to apply beforehand for a summons to enforce the attendance of any witness who is not likely to appear without a summons : nor is it necessary in such cases to record the examination of the accused with the same formalities as in cases under Chapters 12 and 14. *W. R.* 76.

123. When a written defence is tendered in a case tried under Chapter 15 O. Cr. P. C., the Magistrate is not bound to take down the defence of the accused by personally examining him 16 *W. R.* 53.

124. A Magistrate is bound under S. 266† O. Cr. P. C. to examine all the witnesses whom an accused person may produce for his defence. Held by (*Bayley J.*) (*Markby J. dubitante*) that a Magistrate has a discretion under S. 262 O. Cr. P. to summon a witness when he is likely to give material evidence on behalf of the accused. 13 *W. R.* 63.

125. S. 266 and not S. 252‡ of the O. Cr. P. C. is applicable to a case under Chapter 15 of that code ; and under the former section a Magistrate is not bound to summon the witnesses for the defence. 10 *W. R.* 36.

126. In a case of forcibly rescuing cattle under S. 13 Act III of 1857, in which the accused did not summon any witnesses, it was held that even if the accused wanted them summoned, the Magistrate under S. 262 O. Cr. P. C. need not have summoned them, unless persuaded that they were likely to give material evidence, and that they would not attend voluntarily. 10 *W. R.* 42.

127. A complainant in a case who mentioned the names of several witnesses on his behalf was requested to produce them on a certain date. Instead of doing that he produced only two witnesses, who were examined. Held that as the complainant did not apply to the Magistrate to issue summonses on the other witnesses or ask him to proceed under S. 262, O. Cr. P. C. the Magistrate was not wrong in law in deciding the case on the evidence which was before him. 15 *W. R.* 87.

WARRANT CASES TRIABLE BY MAGISTRATES (*evidence for defence in*)

128. Under S. 253§ O. Cr. P. C. it is imperative upon the Magistrate to summons the witnesses named by the prisoner. 2 *N. W. P. R.* 148.

129. In a case falling under c. 14 O. Cr. P. C., a Magistrate is bound by S. 253 to summon the witnesses for the defence even if he entertain doubts as to the

* See S. 283 N. Cr. P. C. † See S. 207 N. Cr. P. C. ‡ See S. 218 N. Cr. P. C.
§ See S. S. 219 & 362 N. Cr. P. C.

value of their evidence, as it is impossible to state beforehand what credit will be given to their evidence. 11 *W. R.* 55.; 14 *W. R.* 81.; 15 *W. R.* 15.

130. Where the accused has not his witnesses in attendance and does not apply to the Magistrate to summon them (S. S. 252 and 253, O. Cr. P. C.) the omission of the Magistrate to require him to produce his witnesses does not prejudice the accused or amount to an error or defect calling for interference within S. 426 O. Cr. P. C. 11 *W. R.* 15.

131. S. 253 O. Cr. P. C. does not apply to cases triable under Chapter 15 of that code; and S. S. 262 and 263 *are applicable when the offence is not punishable with more than six months' imprisonment; and it is in the discretion of the Magistrate to summon the witnesses for the defence if he considers their evidence essential to the just decision of the case, and incumbent on him to summon them only if it appears to him that they are likely to give material evidence on behalf of either party, and that they will not voluntarily appear for the purpose of being examined at the time and place appointed for the hearing of the complaint. 2 *N. W. P. R.* 393.

132. Held by *Ainslie J.*, that in cases falling under Chapter 15 O. Cr. P. C., the accused person has no right to summons to a witness after the Magistrate has proceeded under S. 266 of the Code to hear him and such witnesses as he shall then produce in his defence; that in cases falling under Chapter 12, the accused has no right to a summons except in respect of persons named by him in a list to be given at once on hearing the charge, or on hearing and being furnished with a copy or translation of the charge; and that in cases under Chapter 14, the Magistrate is bound to summon only witnesses mentioned at the time when the accused is put on his defence under S. 252 or at some time previous to this, and that it is discretionary with the Magistrate to summon other witnesses,—the words "at his discretion" in S. 253 being read with S. 254, and so with S. S. 189† and 191 ‡ O.Cr. P. C.

Per Paul J., contra:—When a prisoner is put upon his trial and applies to have any witnesses *subpœnaed*, the Magistrate is, according to the true construction of S. 253, bound to summon those witnesses though he is not obliged to adjourn the trial,—an application for *subpœnas* upon witnesses being quite a different thing from an application for an adjournment. 16 *W. R.* 28.

DISCHARGE.

133. A Magistrate ought not to discharge an accused without taking the evidence of the witnesses for the prosecution named in the petition of complaint. 7 *W. R.* 47.

134. Where there is no *prima facie* case against an accused, and he has not been put on his defence, nor any charge preferred against him, he should be discharged and not acquitted. 8 *W. R.* 45.

135. Where no charge in writing has been drawn up and the prisoner has not been asked to make his defence, the Magistrate, if he thinks that no offence has been proved can only, discharge and not acquit the prisoner. Nor can the Magistrate acquit a prisoner whom he has no jurisdiction to try. 6 *W. R.* 13.

136. A prisoner who had been sent up for trial, and who was discharged by the Deputy Magistrate, was subsequently re-arrested by a Sub-Inspector on the same charge and sent up for trial. The Deputy Magistrate considered the second arrest to be illegal, and prosecuted the Sub-Inspector for wrongful confinement and fined him. Held that the Deputy Magistrate was right, the discharge from custody having been a useless procedure if the accused immediately became liable to be re-arrested without fresh material for prosecution of the charge. 19 *W. R.* 27.

137. The High Court declined to interfere with an order of a Deputy Magis-

* See S. 361 N. Cr. P. C. † See S. 353 N. Cr. P. C. ‡ See S. 355 N. Cr. P.C.

trate discharging an accused without trial in a case under S. 342 P. C. because the complainant and his witnesses were not present. 13 *W. R.* 35.

ENQUIRY INTO CASES TRIABLE BY SESSIONS COURT (*discharge in*)

138. *Per Glover, J.* In a caes triable by the Sessions Court a Magistrate has power to commit the accused to the Sessions after he has once discharged him. 20 *W. R* 19.

139. The discharge by a Deputy Magistrate of a person charged with an offence triable only by a Court of Session, is no bar to the Sessions Judge ordering the committal of such person to the Sessions under S. 435 *O. Cr. P. C. 15 *W. R.* 61.

140. Where a Deputy Commissioner held a proceeding in which the accused was charged with forgery and using a forged document, and after calling on the accused during the inquiry to make a statement, but without calling on him to make any further defence, and after hearing the whole evidence both for the prosecution and for the defence, discharged and acquitted the accused. Held, that there had been no trial, but that this was a proceeding under Chapter XII of Act XXV of 1861, that, under S. 202 †of that Act, the Magistrate had discretion to examine the accused, and under S. 207 to examine witnesses on behalf of the accused, and under S. 225,‡ the Magistrate, when finding there was no sufficient ground for committing the accused to the Sessions, was competent to discharge and acquit him. 19 *W. R.* 49.

SUMMONS CASES TRIABLE BY MAGISTRATES (*discharge in*)

141. Dismissal of a complaint under S. 269 § O. Cr. P. C., in consequence of non-attendance of the complainant, the order of dismissal having been passed before the trial commenced, amounts to a discharge without trial, and does not bar the complaint from being again preferred. 4 *M. R. App.* 8.

142. Where a complaint is preferred before a Magistrate and the witnesses named by the complainant are summoned and attend, but the complainant is absent, a Magistrate may, if he thinks it unnecessary to carry on the enquiry in the absence of the complainant, discharge the accused. 11. *W R.* 39.

WARRANT CASES TRIABLE BY MAGISTRATES (*discharge in*)

143. A discharge under S. 250 $O. Cr.P.C. does not amount to an acquittal. 4 *N. W. P. R.* 23.

144. Under explanation III, S. 215 of the N. Cr. P. C. an order of discharge cannot be passed until the evidence of the witnesses named for the prosecution has been taken. 20 *W. R* 67.

145. In a case before the Joint Magistrate, in which the prosecution was closed, and the accused discharged under S. 215 N. Cr. P. C. the Magistrate, on a petition presented to him by the prosecutor, passed an order of remand directing the Joint Magistrate to proceed with the case at the stage at which he left it: Held that the discharge not being equivalent to an aquittal, the Magistrate might have received a complaint if he saw sufficient reason for doing so, and might have made it over to a subordinate officer to be heard, but he had no power to make the order of remand which he made. 20 *W. R.* 47.

146. Held that where a Magistrate released, an accused person without drawing up a formal charge against him or requiring him to plead or to make any defence to the charge under S. 251 ¶O. Cr. P.C., there was no trial before the Magistrate or acquittal under S. 255 ₱but simply a discharge under S. 250. The Sessions Judge is competent in such a case, under S. 435 to direct the committal of the accused. 5 *W. R.* 58; 9 *W. R.* 15; 12 *W. R.* 65.

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* See S. S. 296 & 298 N. Cr. P. C. † See S. 193 N. Cr. P. C. ‡ See S. 195 N. Cr. P. C. § See S. 208 N. Cr. P. C. $ See S. S. 215 & 216 N. Cr.P. C. ¶ See S. 217 N. Cr. P. C. ₱ See S. 220 N.Cr. P. C.

147. A Magistrate, after he has discharged the accused under S.250 has power, if circumstances appear to him to require it, to take up the case again and to re-try and convict the accused; and the circumstance that he was led to enter upon the second enquiry and second trial by an erroneous order made by the Sessions Judge is no ground for setting aside his proceedings and the conviction. 18 *W. R.* 39; 6 *B. L. R.* 339.

FINDING.

148. A Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are convicted for trial. 13 *W. R.* 50.

149. To enter up *findings* on every head of charge is not only not illegal but the most convenient course. Where the acts constituting the offence are founded on one single continuous transaction, sentence should only be passed for the principal offence. 6 *M. R. App.* 47.

150. When a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding and entered in the calendar. 1 *B. R.* 87.

151. The prisoner was declared entitled to a finding by the Sessions Judge as to the sufficiency or otherwise of the evidence adduced by him to prove his *alibi*, and that he did not abscond to evade justice. 8 *W. R.* 18.

152. To make it legal to punish at P a prisoner committed at C, on a charge of receiving stolen property, the finding must be that the property was stolen at P. 5 *W. R.* 49.

153. Magistrates are bound to record translations of their findings in criminal cases. 1 *B. R.* 17.

ALTERNATIVE (*finding*)

154. An alternative finding is perfectly legal. 7 *W. R.* 13.

155. Proof of contradictory statements on oath, or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under S. 72 P. C. and S. S. 242*, 381† and 382‡ of the O. Cr. P.C. 4 *M. R.* 51.

156. Where a witness intentionally gives false evidence, and it is doubtful whether the false statement was made before the Magistrate or before the Sessions Judge, the witness may be convicted of the offence of giving false evidence upon an alternative finding (*Norman and Campbell J. J. dubitantibus.*) 6 *W. R. F. B. R.* 65.

157. An alternative finding under S. 381 O. Cr. P. C. should not be resorted to until both committing officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges; and such a finding cannot be based in a case of giving false evidence upon two statements which are not absolutely contradictory the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favour of the possible reconcilation of the statements must be made. 12 *W. R.* 11.

JUDGMENTS.

158. Remarks to the effect that the prisoner was a person of wealth and influence, and had prevented truth from appearing, ought not, unless established in evidence, to find a place in a judgment. 8 *W. R.* 13.

159. A Judge is bound to state in his judgment the evidence on which he convicts. The evidence in this case commented on, as well as the omission of the Magistrate to give in the grounds of commitment any particulars of the case. 5 *W. R.* 17.

160. Where a case was referred by a second class Subordinate Magistrate to

* See S. 455 N. Cr. P. C. † See S. 461 N. Cr. P. C. ‡ Repealed by Act X of 1872.

the Divisional Officer, under S. 277 *O. Cr. P. C., the High Court were of opinion that the Divisional Officer was bound to form his own judgment and pass sentence on the case. 5 *M. R. App.* 43.

161. Until the finding is recorded the trial is incomplete. If before the finding is recorded the presiding officer of a court is removed the successor cannot pass judgment upon consideration of the evidence recorded by the predecessor. 4 *M. R. App* 43.

ALTERNATIVE (*judgment*)

162. The power to pass judgment in the alternative given by S. 381 O. Cr P. C., applies to cases in which it is doubtful under which of two sections the offence falls, and not to cases in which both charges are under the same section. 11 *W. R.* 37.

COPIES (*of judgment*)

163. Copies of judgments should be made out at once' without waiting for written application from persons under sentence. 9 *W. R.* 19.

MODE (*of recording judgment*)

164. The grounds of a Sessions Judge's decision should be given in English, and a memorandum recorded in accordance with S. 382 O. Cr. P. C., setting forth the precise offence of which the prisoner is convicted. 4 *W. R.* 19.

JUDGE OF SESSIONS COURT (*trials before the*)

ASSESSORS.

165. The real object of appointing Assessors is to assist the court, and the discussion and statement of points by a Judge sitting with Assessors cannot be said to be otherwise than in furtherance of the object of getting the best assistance for the proper adjudication of the case. 15 *W. R.* 25 ; 7 *B. L. R.* 63.

166. Although the Code of Criminal Procedure does not expressly provide for summing up of the evidence in trials with the aid of Assessors, there is nothing in the code to prevent a Judge from summing up the evidence, which is in fact only a mode of going through and discussing it with the Assessors. 15 *W. R.* 25.

167. In a trial conducted with the aid of Assessors the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction. 6 *B. R. A. J.* 55.

168. In a trial before a Sessions Judge with Assessors when the prisoner pleads not guilty and the Public Prosecutor does not offer evidence in support of the charge the Judge ought to instruct the Assessors that they are bound to find the prisoner not guilty. 4 *M. R. App.* 39.

169. The prisoner having admitted before the Court of Sessions that he had killed his wife, no Assessors were impannelled. At the end, however, of his confession he pleaded that he was not in his right mind at the time. The Judge, therefore, proceeded to record medical and other evidence on the point, and, having come to the conclusion that there was no reason to doubt from the prisoner's conduct, either prior or subsequent to the murder that in committing the murder he knew that he was doing a wrong act, convicted the prisoner. Held that the plea was in effect one of not guilty, and that the trial should not have proceeded without Assessors, and that it should be quashed. 5 *N. W. P. R.* 110.

OPINION (*of assessors*)

170. Assessors ought to give the grounds of their opinion particulary when they differ in opinion from the Judge. 3 *W. R.* 21.

* See S. 46 N. Cr. P. C.

171. No legal conviction can take place unless the opinion of the Assessors is taken on the whole of the evidence in a case. 15 *W. R.* 3.

PENALTY (*for non-attendance of assessors*) *N. Cr. P. C. S.* 414.

172. The order of a Sessions Judge under S. 354 O. Cr. P. C. finding an Assessor is not appealable, nor liable to be interfered with by the High Court under S. 404 of that Code. 8 *W. R.* 83.

SUMMING UP (*to assessors*)

173. A summing up of the evidence is not required in a case tried by Assessors. 11 *W. R.* 39.

VIEW (*by assessors*) *N. Cr. P. C. S.* 253.

174. In cases of view by Assessors of the scene of the alleged offence, it was held that the Judge could not delegate his own function of examining witnesses on the spot, to the Assessors who cannot, under S. 348 O. Cr. P. C. speak to or communicate with any other person that the officer appointed to conduct them to the place. 5 *W. R.* 59.

JUDGE.

175. The fact of a commitment being made by a Joint Majistrate, who is an officer exercising the powers of a Magistrate, is sufficient under S. 359 * O. Cr. P. C. to enable the Sessions Judge to proceed with the trial; and it lies with the party impugning the correctness of the proceedings to show that there was no jurisdiction. 13 *W. R.* 17.

176. A Sessions Judge who makes a complaint before a Magistrate is not incompetent afterwards to try it without the aid of a Jury, if he has no personal or pecuniary interest in the subject of the charge 13 *W. R.* 60, 4 *B. L. R. A. J.* 15.

177. A Court of Sessions is Competent and ought to proceed to the trial of a prisoner who is brought before it upon a charge exhibited by a Magistrate who is authorized to make a commitment, notwithstanding any irregularity or defect of form in recording the complaint. 14 *W. R. F. B. R.* 34.

JUDGE (*duty of*)

178. It is the duty of a Judge to take care that the evidence in each case is complete in itself; and no Judge has any right whatever to place before the Jury any evidence save that which has been legally put in, in the particular case which is under trial.

Evidence which has been put before the Magistrate if used at the sessions in two separate trials, should be noted by the Judge as having been put in, and the deposition ought to be taken from among the proceedings before the Magistrate and placed with the record first of the one case and then of the other of the cases in the Sessions Court,—a memorandum of its removal from each record being made. 16 *W. R.* 36.

179. A Judge should not leave it to the Jury to find whether a communication is privileged or not, but should himself decide it as a point of law. 10 *W. R.* 14; 1 *B. L. R. A. J.* 8.

180. A Judge ought to explain to the Jury the legal construction to be put on a document relied on by the prosecution. 3 *W. R.* 69.

181. In a case of false evidence, it is not necessary for the Judge in his charge to show how the false statements, even if made intentionally; are material in the case. 6 *W. R.* 84.

182. Whether are no a child was competent to give evidence within the mean-

*See S. 231 N. Cr. P. C.

ing of S. 14* Act II of 1855 was a question for the Judge to decide and not for the Jury, the amount of credit to be given to the statement being all that fell within the province of the Jury. 8 *W. R.* 60.

183. The accused was charged with forgery of a hibbanamah and of the kazee's certificate of attestation thereon, and with using as genuine the false hibbanamah and certificate : Held that it was the duty of the Judge instead of leaving the question as to the forgery and of using as genuine the hibbanamah to be decided by a competent court to have tried that question himself. 3 *W. R.* 29.

184. Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence.7 *W.R.*33.

185. A Judge was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found. 11 *W. R.* 20.

186. A Sessions Judge ought to record distinctly whether or not he agrees in the verdict of the Jury. 7 *W. R.* 6.

187. The grounds of each Assessor's opinion should be distinctly recorded by the Judge. 3 *W. R.* 6.

188. It is the duty of the Judge to notice to the Assessors discrepancies and contradictory statements made by witnesses. 5 *W. R.* 70.

189. A Judge should not refuse to try a prisoner brought up in chains to stand his trial, but the Judge may direct the removal of the fetters unless satisfied by a representation from the proper officer that they are necessary. 4 *M. R. App.* 69.

JURORS.

190. The allowing of an objection to a Juror coming within the 3rd clause of S. 344† O. Cr. P. C. is in the discretion of the court, and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous. 16 *W. R.* 56.

191. Held that it was not necessary, in a trial by Jury before a Court of Session, under the provisions of the Code of Criminal Procedure that the Jurors should be sworn. 3 *B. R.* 56.

192. *Quere.* If the Jury in a Sessions trial are not sworn is the omission one which could be covered by S. 13 of the oaths Act X of 1873 ? 20 *W. R.* 19.

JURY.

193. A Judge is not bound to try a Native Christian with the aid of a Christian Jury. 1 *W. R.* 2.

194. The Commissioner of Cooch Behar has no power to hold trial by Jury in the Gowalpara District. 8 *W. R.* 53.

195. Trial by Jury ceases in a district when the district ceases to belong to a division to which trial by Jury has been extended. 8 *W. R.* 39.

196. In a case in which the prisoner was charged with murder and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the medical officer and discharged the prisoner, not considering it necessary that the case should go before a Jury : Held that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence and to withdraw the consideration of the due weight to be given to the evidence from the Jury.16 *W.R.*20.

197. Where a trial was held with a Jury instead of, as it ought to have been, with Assessors, the High Court refused, with reference to the provisions of S. 426‡ O. Cr. P. C. to reverse the sentence as it could dispose of the appeal on the evidence instead of merely restricting itself to questions of law. 18 *W. R.* 59

*See S. 113 Act I of 1872 † See S. 244 N. Cr. P. C. ‡ See S. 283 N. Cr. P. C.

198. An offence under S. 91 of the Registration Act ought not to be tried with the assistance of a jury. Where, however, such offence was tried with the assistance of a jury, and the verdict of the jury who were unanimous in convicting the prisoner was approved of by the Sessions Judge, the High Court considered it unnecessary to quash the proceedings. 14 *W. R.* 32.

DIFFER, JURY (*procedure where*)

199. Held that when a Judge differs from the jury, he should pass such a sentence as he would have passed had he agreed with the jury. 3 *W. R.* 30.

200. In dealing with a reference made by a Sessions Judge under S. 263 N. Cr. P. C., in consequence of his disagreeing from the verdict of the jury, the High Court must deal with it as an appeal by the prosecution, and has authority to convict the accused person on the facts and to pass sentence accordingly,—S. 257 of the Code, by which the court has to decide which view of the facts is correct, being read as qualified by S. 263. 20 *W. R.* 16 70.

201. The Sessions Judge differing from a majority of the jury, who acquitted the accused referred the case to the High Court under S. 263 N. Cr. P. C., to be dealt with as an appeal. Before proceeding with the case, the High Court considered it fair to the accused to give him notice to bring forward any objections he may have to the Sessions Judge's recommendation.

On a consideration of the evidence, the High Court convicted the accused of the offence with which he had been charged. 14 *W. R.* 38.

202. A Sessions Judge may under S. 263 submit to the High Court a case in which he disagrees with the jury in their finding of facts as well as a case in which he complains that the jury has not followed his directions as to the law: and the High Court in a case submitted under that section may acquit the prisoner, if it so thinks fit, on the facts notwithstanding that the jury has found the prisoner guilty. 20 *W. R.* 1.

203. In a case referred to the High Court under S. 263 N. Cr. P. C. because the Sessions Judge differed from the verdict of the jury, the High Court held that it was for the Government, the appellants, who asked for a coviction, to begin and satisfy the court that there was a case calling upon the prisoner for an answer.

The court, on a consideration of the evidence, set aside the verdict of acquittal come to by a majority of the jury, holding that a confession made by the accused before the Assistant Magistrate was good, such confession, even if obtained by deception, being admissible under S 29 of the new Evidence Act 1 of 1872.20 *W.R.*33.

204, The High Court will exercise the powers veste d in it by S.263 only in cases in which it finds the verdict of the jury clearly and undoubtedly wrong. 20 *W. R.* 73.

205. In a case tried by jury, the High Court has no power to go into the facts of the case in order to see whether or not the conviction was right, that standing entirely upon the verdict of the jury. The court has only to consider the facts, in order to see whether the Judge has done his duty in laying the case before the jury for their consideration. 20 *W. R.* 41.

DIRECTION (*by Judge to Jury*)

206. In reviewing the charge of a Judge to a jury in the Mofussil, it is sufficient to see whether the tendency of the charge, taken as a whole, has given a correct or incorrect direction to the mind of the jury, and it is not correct to apply to such charge the criticisms which would be applied to a charge of a Judge in a Court in England.12 *W. R.* 80 ; 4 *B. L. R. App.* 50.

207. It is the duty of a Sessions Judge to give a summing up of the evidence as recorded before him, and to state his own reasons for considering a prisoner guilty. 7 *W. R.* 25.

208. On a trial by jury the Sessions Judge in summing up should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, and what weight the jury ought to attach to its several parts. His omission to do so, if the accused is thereby prejudiced amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict.

No general rule can be laid down as to when a prisoner is prejudiced by a defective summing up, but in general if the finding of the jury in such a case is one that an Appeal Court would set aside, if the trial had taken place with the aid of Assessors, the Court will interfere and set the verdict aside.

In capital cases, and all cases of a serious or complicated nature, the Judge ought to read over the evidence in *extenso* to the jury. 5 *B. R.* 85.

209. A Session's Judge in summing up is bound to advise a jury on questions of fact, and may tell the jury the impression which the evidence has made upon his own mind. 13 *W. R.* 34.

210. A Judge in directing a jury, should confine himself to a general commentary on the evidence and a statement of the legal offence proved, should such evidence be credited. He should not give a positive opinion as to the guilt or innocence of the accused person. 1 *W. R.* 2.

211. A Judge in charging the jury, should avoid expressing any decided opinion. All that a charge should contain is a statement of the evidence, *pro* and *con* with a running commentary as to its agreement or disagreement with the other facts of the case. 1 *W. R.* 26.

212. Where there is no evidence against a prisoner, the Judge ought to charge the jury for an acquittal, and not leave the jury to say whether the prisoner is guilty or not. 7 *W. R.* 39.

213. A Judge has every right to draw the attention of the jury to anything which appears to be a palpable alteration or blot on the face of a document alleged to be forged. 17 *W. R.* 58.

214. It is the duty of a Judge to state to the jury what are the principal points in the evidence, and how they bear for or against the promisoner, in short; to render the jury every assistence in his power towards coming to a right conclusion. 6 *W. R.* 72.

215. When a prisoner is on his trial by a jury upon a charge of murder, it is the duty of the Judge to point out to the jury accurately, the difference between murder, and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence, and leave them to find the facts and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty. 9 *W. R.* 51.

216. Held, in a case of murder, that the Judge had not given a proper direction to the jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplice to point out any independent evidence proving facts showing that the prisoners were or must have been present at, or cognizant of, the murder. 6 *W. R.* 44.

217. Where a Sessions Judge in charging a jury in a case of culpable homicide not amounting to murder omitted to draw their attention to the two classes of culpable homicide mentioned in S. 304 P. C., the High Court considered that the accused were found guilty of the lighter description, and sentenced the accused to the punishment for such lighter description. 12 *W. R.* 35.; 15 *W. R.* 18.

218. In charging a jury on the point of provocation in a case of culpable ho-

micide, a Judge should tell the jury that to bring the case within the exception to S. 300, P. C. the prisoner must have been deprived of the power of self-control by grave and sudden provocation, that there ought to have been sufficient cause for such loss of self-control, and that the provocation was not voluntarily provoked by the prisoner as an excuse for doing harm. 9 *W. R.* 72.

219. Where a person is charged under (S. 218 P. C.) with framing a report incorrectly, or (S. 201 P. C,) giving false information, with intent to save offenders from punishment, the issue to be tried is not, whether such alleged offenders were in fact guilty or not, but merely the belief and intention of the prisoner in respect to their guilt. 8 *W. R.* 68.

220. Held (*Warden J. dissentiente*) that the omission of the Session Judge to tell the jury that the statement of one prisoner is not evidence against his fellow—prisoner is a material error, and one fatal to the trial, notwithstanding that the Sessions Judge dealt with the evidence against each of the prisoners separately. 6 *B. R.* 10.

221. A Judge should not discuss points of law in summing up to the jury, and he should avoid all extraneous and unnecessary argument, merely summing up the evidence, and shewing how the law applies to it. 8 *W. R.* 87.

222. Where a summing up of a Judge to a jury points out to the jury the principal features of the evidence as regards both the case of the crown and the defence of the prisoners, it complies with the requisition of the Code of Criminal Procedure. 13 *W. R.* 23.

223, Where a Sessions Judge is omitted in his charge to the jury to comment on different parts of the evidence for the defence, to which he simply alluded as being unimportant, and allowed evidence as to character and hearsay evidence to go to the jury, the High Court acquitted the prisoner, the other evidence in the case being insufficient for conviction. 15 *W. R.* 37.

224. Evidence of character and previous conduct of a prisoner, being matters of prejudice, and not direct evidence of facts relevant to the charge against the prisoner, ought not to be allowed to go to the jury. 10 *W. R.* 17.

225. Evidence as to character ought not to be laid before a jury, but should only be taken and consider by the Session Judge in awarding punishment. 10 *W. R.* 39 ; 15 *W. R.* 37.

226. A prisoner's inability to say where his son was on the 4th Pous is no evidence on which to direct a jury to convict him of false evidence for saying that on the day previous (3rd Pous) his son was ill at home. 8 *W. R.* 26.

227. In a case of false evidence, reading extracts from the alleged conflicting statements of the prisoner is not sufficient to enable the jury to form a fair opinion on the question. The whole of the deposition given on each occasion ought to be laid before the jury. 6 *W. R.* 92.

228. In the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (S. 401 P. C.), the Judge should, in his charge, put clearly to the jury. (1) The necessity of proof of association. (2) The need of proving that that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts. 6 *M. R. App.* 120.

229. The evidence of accomplices should not be left to a jury without such directions and observations from the Judge as the circumstances of the case may require. 5 *W. R.* 80.

230. Where a Sessions Judge in his charge to the jury in a case in which an approver accomplice gave his evidence drew the attention of the jury to the necessity for requiring corroboration to the approver's evidence before they could convict upon it, and the jury notwithstanding his charge convicted upon the uncorroborated evidence of the accomplice, it was held, following a Full Bench case cited, that the High Court could not interfere with such conviction. 15 *W. R.* 37.

231. A Judge ought not to introduce into his direction to the jury any question as to recommending a prisoner to mercy, but should leave that entirely to the jury. 14 *W. R.* 46.

232. A summing up to the jury, in which the Sessions Judge gave no aid to the jury in the arrangement of the facts which were spoken to by the witnesses, and himself found facts which he should have put to the jury, was pronounced defective, and a verdict founded thereon was set aside and the prisoner ordered to be released. 10 *W. R.* 7.

233. Under S. 379* O. Cr. P. C., a Judge should sum up the evidence on both sides before requiring the jury to deliver their verdict. Under S. 439† of the Code, however, the High Court thought it unnecessary to set aside a conviction in a case in which this was not done. 14 *W. R.* 66.

234. Where the provisions of S. 379 O. Cr. P. C. was neglected, and the Judge did not sum up the evidence at all, a new trial was ordered. 9 *W. R.* 51.

235. Under S. S. 379 and 382 O.Cr.P. C. a Sessions Judge should sum up the evidence on both sides and record the ground of his decision, and the sentence, when passed, should be recorded in a certain specified form. 4 *W. R.* 18.

MISDIRECTION (*to jury*)

236. The omission of a Judge to point out to the jury the weakness of the evidence against the accused, and the possibility of other persons being the guilty parties, does not amount to a possitive misdirection. Where there is some evidence to go to a jury, the Court cannot interfere. There must be a misdirection or some error in law. The case commented on, however, is unsatisfactory. 5 *W. R.* 13.

237. Held that it was no misdirection on the part of the Judge in not calling the attention of the jury, clauses 1 and 2 of S. 100 P. C. when he particularly called their attention to clause 6 of that section. 17 *W. R.* 45.

238. Though the Sessions Judge ought not to have made any remarks as to what the witnesses for the defence stated themselves to have heard, this slight error was held not to amount to a misdirection. 5 *W. R.* 1.

239. Where A deposed that he and R were 4 days in company at M, and the Judge charged the jury that if they found that R was not in company with A during those 4 days at M, but was at S, it did not matter where A was, because it was clear that he could not have been in company with R at M, and must therefore have given false evidence when he said that he was during those 4 days in such company at M. Held by the majority of the court (*Seton Karr J. dissenting*) that there had been no mis-direction. 7 *W. R. F. B. R.* 105.

240. Conviction and sentence set aside (*Glover J. dissenting*) as to two of the prisoners on the ground that there was a misdirection to the jury, because the Judge in summing up omitted to advise the jury not to convict upon the uncorroborated evidence of an approver, and because he treated as corroborative that which was no corroboration in law. 8 *W. R.* 19.

241. In giving a warning to a jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor and immaterial points the witness made different statements, a Judge exercises a wise discretion and affords no ground for the objection of mis-direction to the jury. 1 *W. R.* 17.

242. Held, by the majority of the court, that the omission of the Judge to enter into details regarding the identification of stolen property, does not amount to a mis-direction to the jury. 1 *W. R.* 27.

243. It is no mis-direction for a Judge to tell the jury that, if the prisoner could not prove how he became possessed of certain articles (however small in value

* See S. 255 N. Cr. P. C. † See S. 283 N. Cr. P. C.

and common in use they may have been), it was their duty to convict him, for the presumption in such a case was legally valid that he knew that the property had been unlawfully acquired &c, the Judge drew the attention of the jury especially to the defence. 5 *W. R* 3.

244. The prisoner retracted his statement when read over to him and said that he was compelled to make it. The Judge, without, making any enquiry or taking any evidence on the point, submitted the prisoner's statement to the jury as a confession. Held that the Judge was wrong in so doing, and that he should rather have charged the jury not to accept the prisoner's statement as a confession. 4 *W.R.* 1.

245. There is no mis-direction in a case of false evidence on a Judge pointing out to the jury the contrast between the evidence for the prosecution, and the course followed by the prisoner (namely a simple denial of the charge coupled with a refusal to examine the witnesses in attendance), so long as the Judge left it to the jury to decide between the opposing statements, and to credit which ever they thought most worthy of belief. 2 *W. R.* 60.

246. Where a Sessions Judge left the jury to decide upon the age of a girl who had been kidnapped, merely aiding them with his own opinion in which they expressed their concurrence—Held, that there was no mis-direction to the jury. 7 *W.R.* 22.

247. The statement of a Judge, who presides at a criminal trial, is, upon a case reserved under the 25th clause of the Charter of the High Court, or upon a case certified by the Advocate General under its 26th clause, conclusive as to what has passed at the trial. Neither the affidavits of bystanders or of jurors nor the notes of counsel or of short-hand-writers are admissible to controvert the statement of the Judge.

It is in the discretion of the Judge, who presides at a criminal trial, whether or not he will reserve a point of law for the opinion of the High Court, and such discretion will not be reviewed by the High Court, sitting as a Court of Review, under clause 26 of the Letters Patent.

Semble. Non-direction by a Judge is not a matter upon which the Advocate General should grant a certificate under clause 26 of the Letters Patent.

In considering whether a Judge has mis-directed the jury, the tenor and general effect of the whole summing up should be looked at, and if, upon the whole summing up, the court is of opinion that substantially the proper direction has been given to the jury, it will not interfere, though the Judge has omitted to direct the jury expressly on some important point. 10 *B. R.* 75.

248. The High Court will set aside the verdict of a jury only in such cases in which, by a mis-direction to the jury, the accused has been materially prejudiced, or where has been a failure of justice. 19 *W. R.* 71.

249. The verdict of the jury was reversed on the ground of mis-direction by the Judicial Commissioner in not having left the cause of death and the prisoners connection with certain attempts at bribery as questions for the consideration of the jury. 7 *W. R.* 2.

250. A verdict of guilty of dacoity against certain of the prisoners set aside on the ground of mis-direction, the Judge having omitted to point out to the jury the danger of relying upon the uncorroborated testimony of accomplices. 6 *W. R.* 17.

251. In a case in which the accused were charged with murder (S. 302 P.C.), culpable homicide not amounting to murder (S. 304 P. C.), and voluntarily causing grievous hurt (S. 325 P. C.) the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission of an offence (S. 457P.C.). The jury unanimously acquitted the prisoners of the three original charges, and a majority of the jury (four out of five) acquitted them also of the last charge. The Sessions Judge agreed with the verdict of the jury as regards the three original charges, and recorded a formal order acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the

case to the High Court under S. 263 N. Cr. P. C. Held, that where (as in this case) the Sessions Judge has approved of a verdict on certain charges, and finally acquitted and discharged the accused as to these charges, the High Court cannot under S. 263 convict on the facts on these very charges. That section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case.

As there was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three as original charges, the High Court presumed that the reason which weighed with the majority of the jury in finding the prisoners not guilty on the additional charge must have weighed with the whole jury in finding them not guilty on all the three other charges, and accordingly the court could not set aside the verdict of the majority on the last count without practically finding directly in the teeth of the verdict of the unanimous jury on the first three counts. 20 *W.R.* 73, 74.

252. The power of setting aside convictions and ordering new trials, for any error or defect in the summing up, will be exercised by the High Court only when the Court is satisfied that the accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby. 5 *W. R.* 80.

253. The High Court will not alter a conviction by a Sessions Court aided by a jury, on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceedings and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised. 5 *B. R.* 56.

DUTY (*of jury*)

254. It is in the province of a jury to weigh the evidence as to the truth or falsity of the evidence, and to Judge of the intention. 3 *W.R.* 58.

SEPARATION (*of jury*)

255. By the practice of the Supreme Court at Bombay before the Indian Penal Code came into operation, on a trial for treason or felony the jury (as in England) was kept together during the night under the charge of officers of the court; but on a trial for mis-demeanor it was in the discretion of the Judge whether they should be kept together, or allowed to return to their homes for the night, the latter being generally done; and after the code came into operation, the practice continued the same, as well in the Supreme Court, as subsequently in the High Court; the Judges applying the Rule by determining whether the offence under trial would by the old law, have been a felony or a mis-demeanor.

Where the Judge, on a charge under S. 467 P. C. permitted the jury to separate on the first day of the trial and before verdict: Held that the exercise of his discretion was not a matter to be reviewed by the High Court under S. 26 of the Letters Patent, there being no error in any point of law; as the offence charged was only a mis-demeanor under the law in force before the Indian Penal Code took effect. 3 *B. R.* 20.

UNANIMITY (*of jury*)

256. When a jury are not unanimous, the Judge is not bound to summon a new jury. 1 *W. R.* 41.

VERDICT (*of jury*)

257. A Judge ought not to put questions to any of the jury as to his reasons for the verdict he has given. 20 *W. R.* 50.

258. In a trial for robbery, it is competent to the jury, if they disbelieve the evidence as to the assault (*i. e.* as to the circumstances of aggravation) to bring in a verdict of guilty of theft. 2 *W. R.* 13.

259. The law does not prescribe any specific form in which the jury are to return their finding, and they are at liberty to deliver it in any form which they think fit. If that finding is not exhaustive as to the facts in issue which go to make up the charge or charges, it is competent to the Judge, and is indeed his duty, to put such questions to them as shall elicit in complete finding. 14 *W. R.* 59.

260. A jury may be satisfied with a minimum of proof, and it is beyond the power of the High Court in such cases to interfere with its verdict, but when there is nothing which can, if believed, amount to proof the case should not be put to the jury at all, as a verdict of guilty cannot, under such circumstances, be sustained. 16 *W. R.* 19.

261. The finding of a jury that, although the accused killed the deceased the crime was not murder, not because it fell under any of the exceptions allowed by law, but because the accused had no object in killing him, is not a legal finding and, does not amount to a conviction of culpable homicide not amounting to murder. 1 *W. R.* 50.

262. Where a Sessions Judge refused to accept the verdict of the jury acquitting the prisoner on the first count and finding him guilty on the second and required them to find the prisoner guilty on the first count,—Held, that the Judge has no power to control the jury in this manner, but that he should have recorded the finding on the first count as the verdict in the case, and sentenced the prisoner accordingly. 7 *W. R.* 22.

263. Held, (*L. S. Jackson dissenting*) that where a jury returns a verdict of guilty or not guilty under the express direction of the presiding Judge, and such direction is bad in law, It is not competent to the High Court, on revision, to set aside such erroneous direction, and therefore to quash the proceedings and order a new trial. 11 *W. R.* 29.

264. Where a jury convicted a prisoner contrary to the charge of the Sessions Judge, which charge was held by the High Court to have been a proper charge, the High Court, refused to interfere, although it concurred with the Sessions Judge in thinking that the verdict of the jury was not correct. The case was one in which an application could be made to the Government; but as regards the Court, the petitions were rejected. 18 *W. R.* 45.

265. The prisoners were tried under S. 330 P. C. (for voluntarily causing hurt to a girl) and under S. 348 (for wrongfully confining her), circumstances of aggravation were alleged, as lifting up and using a sword, of lowering the girl into a well and of pricking her with thorns. The jury in their verdict stated that they disbelieved those allegations and also the charge of illegal confinement, but that they believed that some slaps had been given. The Judge then asked the jury whether they convicted on either, and, if so, which head of charge. They answered that they believed the prisoners had beaten the girl, and that they convicted them under S. 330. Held that the question put by the Judge to the jury was a proper one, and not one of law. The conviction was upheld.

Such a case is not governed by the Rule of English Law as to special verdicts. 8 *B. L. R.* 557.

266. If a Sessions Judge thinks that a jury is wrong in convicting a prisoner of culpable homicide, and not of murder, though he cannot interfere with the finding, he may sentence the prisoner to transportation for life instead of to 10 years, transportation. 1 *W. R.* 19.

MAGISTRATES (*summons cases triable by*)

ADJOURNMENT *N. Cr. P. C. S.* 208.

267. In a trial held under Chapter 15 O. Cr. P. C., it is not an irregularity to

adjourn the trial under S. 269* for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial. 16 *W. R.* 21.

268. The Deputy Magistrate's order dismissing a case for default (after repeated unnecessary adjournments and after the accused was put on his defence) upon a day to which no legal adjournment was made, was set aside as illegal. 16 *W. R.* 58.

COMPENSATION.

BREACH OF CONTRACT (*amends in case of*)

269. An order directing compensation under Act XIII of 1859 is illegal. Such portion of the money advanced to the defendant as has been appropriated to the fulfilment of the contract or as could justly be set off against a part fulfilment of the contract ought not to be ordered to be refunded. 4 *M. R. App.* 68.

COMPENSATION (*for loss or damage caused*)

270. The award of compensation referred to in S. 44† O. Cr. P. C. should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and should be found upon a statement of loss, damage, or expenses as the case may be, ascertained at the trial. 11 *W. R.* 53.

271. A Magistrate having jurisdiction is authorized by law in making an order under S. 270‡ O. Cr. P. C. directing the complainant to make amends to the accused, notwithstanding that the complainant is to take his trial for perjury. 15 *W. R.* 9; 6 *B. L. R.* 296.

COMPENSATION (*awardable*)

272. Amends, under S. 270 O. Cr. P. C., are awardable only in cases triable by the Magistrate which a summons on complaint shall ordinarily issue. 5 *B. R.* 12.

COMPENSATION (*not awardable*)

273. A fine cannot be awarded as compensation in a case falling under Chapter 14 O. Cr. P. C. 3 *W. R.* 60.

274. When, on a complaint being preferred to a Magistrate of an offence not coming within Chapter 15 O. Cr. P. C., the Magistrate alters it so as to bring it under Chapter 15, he cannot award compensation to the accused, under S. 270 O. Cr. P. C., the offence originally complained of not being one for which compensation can be awarded. 7 *B. R. A. J.* 58.

CONFINEMENT, WRONGFUL (*amends in case of*)

285. Amends cannot be awarded in a case of wrongful confinement 7 *W. R.* 11; 17 *W. R.* 1.

CRIMINAL FORCE AND THEFT OR ROBBERY (*amends in cases of*)

276. An award of compensation under S. 270 O. Cr. P. C., was set aside as illegal in a case of criminal force and theft or robbery, because the charge was in part one of theft or robbery, which did not come under Chapter 15, and because criminal force really was used to the complainant. 18 *W. R.* 6.

DACOITY (*amends in case of*)

277. The Sessions Judge should record under what section, or on what grounds, he orders a portion of the fines inflicted on prisoners convicted of Dacoity to be made over to the complainant. 2 *W. R.* 58.

DEFAMATION (*amends in case of*)

278. Compensation is not awardable in cases of defamation in which the complainant admits the more serious charges complained of. 1 *W. R.* 6.

*See S. 208 N. Cr. P. C. † See S. 308 N. Cr. P. C. ‡ See S. 209 N. Cr. P.

FALSE CHARGE OF THEFT (*amends in case of*)

279. Amends cannot be awarded for a false charge of theft. 2 *W. R.* 57. 3 *W. R.* 70.

280. Although S. 270 O. Cr. P. C. forbids compensation to a person falsely and vexatiously charged with theft, yet the law does not prevent a Magistrate from fining an unjust accuser. 1 *W. R.* 1.

FALSE COMPLAINTS (*amend in case of*)

281. S. 270 O. Cr. P. C. (authorizing the award by a Magistrate of amends in cases of false complaints) applies only to complaints made and cases tried under Chapter 15 of the Code, and is limited to cases punishable under the Penal Code with imprisonment for a period not exceeding six months. 8 *W. R.* 54.

FRIVOLOUS PROSECUTIONS (*amends. in case of*)

282. S. 270 O. Cr. P. C. applies only when a complaint of an offence, triable under Chapter 15 of the Code, is dismissed. 6 *M. R. App* 49.

283. S. 270 O. Cr. P. C. does not apply to complaints under a special law, but only to complaints triable by the Magistrate and punishable under the Penal Code with imprisonment for a period not exceeding six months. 14 *W. R.* 36.

284. The power of Magistrates to award compensation to accused persons against whom frivolous and vexatious complaints have been made, is not confined to complaints brought under the provisions of the Penal Code. 4 *N. W. P. R.* 94.

285. Magistrates have no power to award fines to accused as compensation for frivolous and vexatious prosecutions, except in cases in which a summons on complaint shall ordinarily issue. 1 *B. R. A. J.* 181.

286. Under S. 270 O. Cr. P. C., a Magistrate dismissing a complaint as frivolous or vexatious can only award a sum not exceeding Rs. 50 to the accused by way of *compensation*, and cannot impose it by way of *fine*, nor can he directly sentence the complainant to imprisonment in default of payment. 2 *N. W. P. R.* 430.

287. A Magistrate is not authorized under S. 270 to award compensation from the complainant to the accused in respect of an unfounded charge brought against such accused of being a person of bad Character or repute. 2 *N. W. P. R.* 447.

288. The High Court refused to interfere with the order of a Magistrate finding complainants under S. 270 O Cr. P. C., when it appeared, after due enquiry by the Magistrate, that the complainants had laid claim to large jummas in a *chur* without possessing any documents to prove their rights. 11 *W. R.* 10.

289. Where a complainant prefers three charges of three distinct offences, two of which are offences triable under c. 15 and one under c. 14 O. Cr. P. C. a Magistrate may award amends to the accused under S. 270 of the Code, if he considers he charge with reference to the cases under c. 15 to have been vexatious. 13 *W. R.* 39.

HOUSE-BREAKING (*amends in case of*)

290. Amends cannot be awarded in a case of house-breaking by night or theft. 7 *W. R.* 12.

HURT, CAUSING (*amends in case of*)

291. On a reference of a Sessions Judge, an order made by a Magistrate under S. 44 O. Cr. P. C., awarding compensation to the complainant out of a fine inflicted for causing hurt—reversed: as there was no evidence on the record to show that "loss" was caused or that "any special damage of a pecuniary nature resulted" to the complainant by the offence. 3 *B. R. A. J.* 43.

292. In a trial for causing hurt, the Sub-Magistrate awarded compensation to the defendant for a frivolous and vexatious complaint under S. 270: Held, that the section did not apply to such a case. 5 *M. R. App.* 40.

LABOR, UNLAWFUL COMPULSARY (*amends in case of*)

293. Amends cannot be awarded in a case under S. 374 P. C. (unlawful compulsary labor) which comes under Chapter 14 O. Cr. P. C. 5 *W. R.* 1.

MEASURE (*of compensation*)

294. Fifty rupees is the measure of compensation awardable from any com plainant, irrespective of the number of accused persons. 8 *W. R.* 54 ; 14 *W. R.* 75.

295. The compensation awarded under S. 44 O. Cr. P. C. to the person injured in consideration of the loss which he has suffered, corresponds to *damages* awarded in civil proceedings. 5 *W. R.* 76.

MISCHIEF (*amends in case of*)

296. The Joint Magistrate was held not competent to direct under S. 44 O. Cr. P. C. that a portion of a fine inflicted under S. 434 P. C. be paid to an Ameen for the purpose of paying the expense of his deputation to restore the land-marks which had been destroyed by the opposite party. 6 *W. R.* 93.

MURDER (*amends in case of*)

297. Compensation under S. 44 cannot be awarded to any one excepting the person who has directly suffered by the offence. It cannot be given to the heirs of a person who has been killed. 10 *W. R* 39.

298. An award of compensation to the widow of a person who died in consequence of a fall into a pit, negligently dug by the accused, from the fine imposed on the latter, is illegal. 7 *B. R. A. J.* 73.

THEFT (*amends in case of*)

299. Amends cannot be awarded in a case of theft. 6 *W. R.* 55; 7 *W. R.* 40.

300. Where loss is occasined to a person whose property has been stolen, it is not illegal for the trying Magistrate to award portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner. 5 *B. R.* 41.

301. In a case in which the accused was charged with having stolen a pony, the Magistrate sentenced the accused to imprisonment, and awarded a fine of Rs. 25, which he ordered should, if realized, be paid over to the complainant, directing at the same time that the pony should be restored, to a third party, by whom it had been purchased *bona fide* at a public sale, the Magistrate relying on S. 418 N. Cr.P. C. and on the rule of English Law protecting a *bona fide* purchaser in market overt.

The Sessions Judge considered that S.418 was not intended to supersede S. 108 Act IX of 1872, and that, as under the latter law, the property in the pony did not pass to the third party, purchaser, the pony should have been restored to the prosecutor. Held that the fine of Rs. 25 imposed upon the prisoner could not be paid over to the complainant, either under S. 418, or under any supposed rule of law relating sales in market overt, and that if any such order could be made, it would be under S. 308 of the Code. The order so far as it directed that the fine be paid to the complainant was accordingly set aside. 20 *W. R.* 38.

COMPLAINANT (*non-appearance of*) *N. Cr. P. C. S.* 205.

302. The Deputy Magistrate did not act illegally in dismissing the case when the complainant did not appear on the day fixed. 3 *W. R.* 36.

303. Where a Magistrate dismissed a complaint in default under S. 259 O. Cr. P. C. and fined the complainant under S. 270, the fine was remitted and ordered to be refunded. 17 *W. R.* 6.

304. In a case falling under Chapter 15 O. Cr. P. C., a Deputy Magistrate has no power to dismiss a complaint on account of the non-attendance of complainant,

even if a summons, instead of a warrant is issued in the first instance requiring the attendance of the complainant. 10 *W. R.* 31.

305. A Deputy Magistrate has no power to dismiss in default of prosecution a charge laid, under S. 347 P. C., of wrongful confinement for the purpose of extorting money.

Where the evidence of a prosecutor and his witnesses is taken in the presence of the accused, and the case is postponed by the court for the evidence of witnesses for the defence, the case ought not to be dismissed for default of prosecution if, on the day to which it has been postponed, the prosecutor is not present. 12 *W. R.* 27.

306. Where the default of complainant's witnesses was caused by the Deputy Magistrate shifting his court to a place different from that named in the summons: Held that it was irregular to throw out the case without giving them a second opportunity of appearing. 5 *W. R.* 51.

PROCEDURE.

DENIAL OF COMPLAINT (*procedure on—by accused*) *N. Cr. P. C.* 207.

307. In a case under Chapter 15 O. Cr. P. C., it is expected that parties will bring their own witnesses with them. If they require the attendance of any witness, they should apply to the Magistrate to cause his attendance; and where they do not so apply, it is sufficient if the Magistrate record in his judgment the substance of the defendant's answer. 10 *W. R.* 16.

308. When an accused person denies the truth of the complaint made against him, the Magistrate ought, under S. 266 O. Cr. P. C. to hear the complainant and his witnesses in support of the complainant and also the accused and his witnesses. 6 *W. R.* 75.

309. S. 266 O. Cr. P. C. only requires the Magistrate to hear such witnesses as the accused shall produce in his defence. 4 *M. R. App.* 29.

310. Where in a trial before him a Magistrate refused to examine or put upon his oath a witness tendered by the accused, it was held that the refusal was altogether irregular and illegal under S. 266 O. Cr. P. C., and had prejudiced the prisoner, whose conviction was therefore quashed. 12 *W. R.* 78.

JUTE STORING, IN A WARE-HOUSE WITHOUT LICENCE (*procedure in case of*)

311. Before a conviction for storing jute in a ware-house without a licence can be had under S. 4 Act II (B. C.) of 1872, proceedings should be taken under the provisions of Chapter 15 O. Cr.P. C., as required by S. 34 of the former Act. 19 *W.R.* 4.

MAGISTRATES (*warrant cases triable by*)

DENIAL OF COMPLAINT (*procedure on—by accused*)

312. In a case apparently coming under Chapter 14 O. Cr. P. C., where the complainant has deposed on solemn affirmation, the mere denial of the accused proves nothing. The complainant's witnesses should be examined and the investigation proceeded with. 16 *W. R.* 59.

DISCRETION (*of Magistrate*)

313. The course taken by a Magistrate before preparing a charge under Chapter 14 O. Cr. P. C. must depend upon the circumstances of each case and the Magistrate should exercise his discretion in the matter. 3 *M. R. App.* 2.

PLEA.

314. Voluntary intoxication is not a valid plea for an offence. 5 *W. R.* 79.

315. An accused should *plead* by his own mouth and not through his counsel or pleader, though his counsel or pleader may at the proper time address the court on his behalf. 15 *W. R.* 42.

AUTREFOIS ACQUIT (*plea of*)

316. To render a formal acquittal or conviction a defence on a second trial, the offence must, according to S. 55* O. Cr. P. C. be the same offence. The prisoner was charged with having forged pottahs. A and B bearing the same date and adduced in evidence by him in the same suit. No mention of any charge as to pattah B was made in the order of commitment ; and the prisoner having been acquitted on an indictment for forging pottah A, it was held by the majority of the court, (*Mark-by J. dissenting*) that the plea of *autrefois acquit* was inadmissible on a subsequent trial of the prisoner for forging pottah B. 7 *W. R. F. B. R.* 15.

GUILTY (*plea of*)

317. Where a prisoner pleads guilty, his conviction upon that plea is valid, although there are no Assessors. 10 *W. R.* 43 ; 2 *B. L. R.* 23.

318. Where the accused pleads guilty before a Sessions Judge to a charge of murder the Sessions Judge mght either convict him on that plea of that charge, or proceed to try him on the evidence, but he cannot without trial convict, the accused of culpable homicide not amounting to murder to which offence the accused did not plea guilty. 13 *W. R.* 55.

GUILTY, NOT (*plea of*)

319. Where a prisoner pleads guilty but goes on to say that he did not commi the offence with which he is charged,the plea is really one of not guilty. 11 *W.R.*53

320. In a case of causing grievous hurt to B, the prisoner, on having the charge read to him, made a statement in which he stated that he had had a quarrel with B, and struck him twice with a stick in anger: Held, that the Sessions Judge was wrong in treating this statement as a plea of guilty and in convicting thereon, and the conviction was quashed and the case remanded for trial. 11 *W. R.* 6.

JURISDICTION, WANT OF (*plea of*)

321. A plea of want of jurisdiction may be taken in the High Court, though not taken below. 16 *W. R.* 69.

322. The case of a prisoner accused of the offence of attempting to cheat by personation was referred for trial by the District Magistrate to a F. P. Magistrate, who, without a complaint being made to him, convicted and sentenced the prisoner. The conviction and sentence were confirmed by the Sessions Judge. On application to the High Court to annul the conviction, on the ground that the F. P. Magistrate, had no jurisdiction to try the case, the court refused the application, as the question of jurisdiction had not been raised before the Sessions Court. 4 *B. R.* 33.

REFUSAL (*to plead*)

323. Where it was not shown that there were any witnesses forthcomming for examination other than those whom the Sessions Judge did examine, the court refused with reference to S. 363† O. Cr. P. C. 12 *W. R.* 73.

PUNISHMENTS.

DEATH.

324. Capital sentence should be pronounced on a conviction for murder even if the accused be pregnant, although the execution of the sentence should be differed till after delivery. 15 *W. R.* 66.

325. A woman, being quick with child, is exempt from capital punishment. 3 *W. R.* 15.

326. When murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death. 2 *W.R.* 39.

* See S. 460 N. Cr. P. C. † See S. S. 236 & 238 N. Cr. P. C.

CONFIRMATION (*of sentence of death*)

327. The fact that except death no punishment more severe than that which the prisoner is undergoing at the time of the commission of the offence can be inflicted is not of itself sufficient to justify the court in condemning the convict to death. 19 *W. R.* 68.

MITIGATION (*of sentence of death*)

328. A capital sentence mitigated in the case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner. 1 *W. R.* 46.

FINE.

329. A sentence must impose a specific fine on each prisoner. 5 *M.R. App.* 5.

330. Fine alone is not a legal sentence for a prisoner convicted under S. 344 P.C. 1 *B. R. A. J.* 39.

331. On a conviction for theft in a dwelling house under S. 380 P. C., fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment. 16 *W. R.* 18.

332. The description of fine which it was the object of S. 63 of the Penal Code to prohibit, was a fine which it would be impossible or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence.

Quere—Whether S. 63 has any application to fines inflicted by a Magistrate. 7 *W. R.* 37.

DACOITY (*fine in case of*)

333. A sentence of fine only is illegal in a case of dacoity. 6 *W. R.* 54.

LEVY (*of fine*) *N. Cr. P. C. S.* 307.

334. The provisions of S. 61 O. Cr. P C. do not apply to fines imposed under Act XXI of 1856; such fines cannot be levied by distress and sale of the offender's property. 8 *B. L. R. App.* 47.

335. S. 34 Act XVIII of 1854 prescribes the mode in which fines levied under that Act, are to be recovered. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed. 6 *M. R. App.* 37.

336. In every case in which an offender is sentenced to fine, the court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. 9 *W. R, F. B. R.* 50.

337. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor. But the court which levies the fine must be the same as the court which imposed it. 9 *W. R F. B. R.* 50.

338. On a reference as to whether the restriction for the recovery of fines to movable property applied only during the lifetime of the offender, and whether the fine could after his death be recovered, under S. 70 P.C., from his immovable property, the court was of opinion that the law had only provided for the distress and sale of movable property, and that there was no way in which immovable property could be made liable. 5 *B. R.* 63.

339. When a fine is imposed in addition to transportation and the whole or part of the fine is levied, it is the duty of the Sessions Judges to inform the authorities at Port Blair of the fact. 5 *M. R. App.* 44.

FORFEITURE (*of property*)

340. The English Law of forfeiture of the personal property of persons committing suicide, if ever applied to Europeans in India, was not applicable to Natives.

Quere—Whether the law had existence as regards Europeans in India. 8 *W.R.* 14.

341. S. 62 P. C. which provides for forfeitures, limits them to cases when the parties shall have been transported or sentenced to imprisonment for at least seven years. 8 *W. R.* 35.

342. Where a zemindar was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Sessions Judge, who added a sentence of forfeiture of the rents and profits of the prisoner's estates under S. 62 P. C. the High Court set aside the sentence under S. 62 as too severe. That sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances. 12 *W. R.* 17.

ABSCONDING OFFENDER (*forfeiture of property of*)

343. Forfeiture of property of an absconding offender, who appears within two years from the attachment of his property, should not be carried into effect until after a regular enquiry into the causes of the offender's absence. 3 *W. R.* 63.

344. The property of an accused who had absconded, having been attached after the usual proclamation, and made over to Government, it was held that under the circumstances of this case, it was not necessary, when the accused returned and applied for the property, that the Government should adduce evidence to prove that the accused had absconded or that the legal formalities of the proclamation had been duly attended to, as the accused did not deny the attempt to arrest him or the issue of the proclamation. 9 *W. R.* 27.

345. The High Court cancelled a previous order made by it (under an error in law caused by a misrepresentation of the facts) directing the restoration of the movable property of a prisoner which was under attachment; the court not having been informed at the time that the property in question had, under S. 184* of the O. Cr. P. C., been declared to be at the disposal of Government. Property so declared to be at the disposal of Government can only be restored by Government. 18 *W. R.* 34.

346. In order to lay a sufficient foundation for the issue of a proclamation under S. 183,† and the accompanying order of attachment under S. 184 O. Cr. P. C., the Magistrate must upon some sufficient materials find judicially that the person against whom the proclamation is to be issued has absconded or concealed himself for the purpose of avoiding the service of the warrant of arrest previously issued against him.

The period of thirty days which is prescribed in S. 183 as the minimum period within which the person is to be required by the proclamation to appear, was intended by the Legislature to run from the date in which the publication in the mode prescribed by the same section should be effected.

The declaration of forfeiture directed to be made in S. 184, if not made before the person affected by the proclamation has come in, or has been brought in, ought not to be made at all. 6 *W. R* 73; 19 *W. R.* 12.

347. S. S. 183 and 184 O. Cr. P. C. do not apply to offences punishable with imprisonment extending to six months only.

There is no rule which requires a Magistrate to satisfy himself that a party has absconded, before issuing a proclamation, but the party, on suing to recover his property, may prove by evidence that he had not absconded. 3 *W. R.* 34.

348. Before a Magistrate proceeds to declare attached property forfeited, he should take evidence to prove compliance with the formalities laid down by law with regard to proclamation. 3 *W. R.* 34.

349. An order of forfeiture under S. 184 O. Cr. P. C. if substantially legal, cannot be disturbed for an immaterial error of procedure. 8 *W. R.* 61.

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* See. S. 172 N. Cr. P. C. † See S. 171 N. Cr. P. C.

CLAIMS (*to attached property of absconding offender*)

350. The proper remedy of claimants to property attached as belonging to an absconding offender is by a civil suit.

The court declined to quash such an attachment as made without observance of the due formalities, being of opinion that the plea of informality could be considered on the surrender of the fugitive, but cautioned the Magistrate gainst a sale until the needful formalities were carried out. 7 *W. R.* 36; 17 *W. R.* 10.

IMPRISONMENT.

351. Held that under Act 1 of 1868 S. 2 cl. 18, the Sessions Judge should have specified in his warrant whether the imprisonment awarded to a person convicted under S. 80 Act VIII of 1871 should be simple or rigorous, but that, as he had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant. 11 *W. R.* 3.

352. *Quere*—Can a sentence of fine be substituted for one of imprisonment. 15 *W. R.* 7.

IMPRISONMENT (*in cases of conviction of certain offences*)

CONFINEMENT WRONGFUL, TO EXTORT CONFESSIONS &c, (*imprisonment in case of*)

353. A sentence of fine only cannot be passed under S. 348 P. C. (wrongful confinement to extort confession, &c) part of the sentence must be imprisonment. 5 *W. R.* 5.

FALSE CHARGE TO INJURE (*imprisonment in case of*)

354. A prisoner convicted under the second clause of S. 211 P. C. should be sentenced to imprisonment with or without fine, and not to fine alone. 1 *B.R. A.J* 34.

FALSE STATEMENT ON OATH TO PUBLIC SERVANT (*imprisonment in case of*)

355. A sentence under S. 181 P. C. which awards no term of imprisonment is illegal. 4 *M. R. App.* 18.

HURT, GRIEVOUS (*imprisonment in case of*)

356. The offence of causing grievous hurt is punishable by imprisonment and fine, and not imprisonment or fine. 2 *W. R.* 32, 34.

INTERRUPTION TO PUBLIC SERVANT DURING A JUDICIAL PROCEEDING (*imprisonment in case of*)

357. In a case of interruption to a public servant in a stage of a judicial proceeding under S. 228 P. C., a sentence of imprisonment cannot be passed under S. 163* O. Cr. P. C. 10 *W. R.* 48.

SUICIDE, ATTEMPT TO COMMIT (*imprisonment in case of*)

358. A prisoner found guilty, under S. 309 P. C. of an attempt to commit suicide must be sentenced to some imprisonment, and not merely to payment of a fine. 1 *B. R. A.J.* 4.

IMPRISONMENT (*in default of payment of fine*)

359. S. 45† O Cr. P. C. makes applicable the provisions of S. 65 P.C. not only to offences falling under that code as defined in its 40th section, but to every case in which a Magistrate has jurisdiction under S. 21‡ of the O. Cr. P. C. 5 *B. R.* 61.

360. Imprisonment in default of payment of a fine inflicted under Act VII of 1867, S. 31, ought to be simple, not rigorous. 5 *B. R.* 43.

361. Imprisonment for one month awarded in default of payment of a fine under S. 3 of the Salt Revenue Act XXXI of 1850 was accordingly reduced to three weeks' simple imprisonment. 5 *B. R.* 61.

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* See S. S. 435 & 436 N. Cr.P.C. †See S. 309 N. Cr.P.C. ‡ See S.S.6,7&8 N. Cr.P.C.

362. Additional imprisonment in default of payment of fine must be rigorous and not in transportation. 7 *W. R.* 31.

363. In a case of assault, a sentence inflicting a fine of 50 rupees and awarding imprisonment for one month in default of payment of the fine is illegal, with reference to S. 8. 65 and 352 of the Penal Code. 16 *W. R.* 42.

364. The sentence of imprisonment passed in default of the payment of a fine inflicted under S. 290 P. C. (for committing a public nuisance should be one of simple), not rigorous, imprisonment. 5 *B. R.* 45.

365. Held by the majority of the court (*Seton Karr J. dissenting*) that an offender, who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any movable property belonging to him which may be found within the jurisdiction of the Magistrate of the district, whether the officer who inflicted the fine issued any special directions on the subject or not. 3 *W. R.* 62.

366. A prisoner was sentenced to imprisonment and fine, and in default of payment of the latter to a further term of imprisonment. He paid a portion of the fine, but, that fact not having been communicated to the Jailor, underwent the entire further term of imprisonment: Held that under these circumstances, the court had no power to order the fine to be refunded. 4 *B. R.* 37.

COMMUTATION OF IMPRISONMENT (*for default in payment of fine*)

367. According to S. 3 Act XXIII of 1860, a fine of Rs. 180 cannot be commuted to imprisonment for a longer term than 4 moths. 18 *W. R.* 9.

RIGOROUS (*imprisonment*)

368. A sentence of rigorous imprisonment upon conviction for an offence under S. 48 Act XXIV of 1859 is illegal. 5 *M. R. App.* 35.

SIMPLE (*imprisonment*)

369. Simple and not rigorous imprisonment can be inflicted in default of payment of a fine imposed on an offender convicted under S. 179 P. C. for refusal to answer a question demanded of him by a public servant on a subject on which he was legally bound to state the truth. 5 *W. R.* 76.

370. A sentence of rigorous imprisonment passed by a Magistrate F. P., under S. 188 P. C., for disobedience to an order duly promulgated by a public servant, altered to one of simple imprisonment; as the Magistrate's finding did not show that the case came wtihin the latter part of the section, in which case alone the infliction of rigorous imprisonment was authorised. 3 *B. R.* 32.

MEASUREMENT (*of punishment*)

371. The measure of punishment is a matter entirely in the discretion of the Court of Session. 14 *W. R.* 53.

SENTENCE.

372. Where a Magistrate convicts a person of an offence he is bound to pass some sentence. 4 *M. R. App.* 66.

373. In a case in which a legal sentence, however light it may be, has been passed, the High Court, sitting as a Court of Revision under S. 404* O. Cr. P. C., have not the power to interfere with that sentence, inasmuch as under S. 405,† the court cannot say that the sentence is contrary to law. 15 *W. R.* 83.

ADDITIONAL (*sentence*)

374. The punishment for escape from lawful custody (S. 224 P.C.) in a case in which that is *one* of the offences of which the prisoner is convicted, must be *in addition* to any punishment awarded for the substantive offence. 8 *W. R.* 85.

ALTERNATIVE (*sentence*)

375. Where a conviction has been had under two sections of the Penal Code, in *one* of which only an alternative sentence of imprisonment or fine is allowed, a sentence of fine cannot be passed. 11 *W. R.* 39.

376. Held that where the prisoners were charged under S. 148 P. C. of rioting armed with deadly weapons, and also under S. 324 P. C. of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under *one or other* of these sections, the charges being properly speaking only alternative charges. 10 *W.R.* 63.

COMMENCEMENT (*of sentence*)

377. A sentence of imprisonment cannot be suspended to take effect at a future period but must commence, from the time that the sentence is passed. Where a Deputy Magistrate postponed the execution of a sentence of imprisonment for a stated period at the request of the accused, to allow the accused to appeal, it was held that the sentence was bad in law and could not be carried into execution. 12 *W. R.* 47.

COMMUTATION (*of sentence*)

378. Though the evidence was held to be sufficient to convict the accused of murder, yet as the evidence gave rise to doubts as to the precise part taken by the prisoner, it was thought safer to remit the capital sentence and pass one of transportation for life. 1 *W. R.* 48.

379. The sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury, than under the influence of any worse passion. 6 *W. R.* 46.

380. A sentence of death was commuted into one of transportation for life in the case of a prisoner who committed murder in the belief that the deceased was a wizard and the cause of his child's illness, and that, by killing the deceased, the child's life might be saved. 6 *W. R.* 82.

CONTEMPORANEOUS (*sentence*)

381. Contemporaneous sentences are not justified by the Penal Code. 3 *W.R.* 13.

382. An accused person cannot be punished, first on a charge for rioting, and afterwards on a charge of hurt, when the latter is included in the former. 17 *W. R.* 59.

383. Where substantially but one offence has been committed, and the acts, which are the basis of one charge, are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted under S. 224 P. C. for escape, S. 226 P. C., for rescuing from lawful custody, and under S. 353 P. C. for using criminal force in so doing, and sentenced to separate punishments under each section. Held that the prisoners had only done one act, and were guilty of only one offence, and should only have been found guilty under S. S. 224 and 225 of "escape" and "rescuing", respectively, and sentenced accordingly. 6 *B. L. R. A. J.* 14; 9 *W. R.* 12.

384. A cumulative sentence under S. 143 P. C. (being a member of an unlawful assembly) and under S. 353 (using criminal force against a public servant) was upheld by the High Court. 16 *W. R.* 60.

385. Where prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) fire arms were used, is is wrong to pass a cumulative sentence and to punish the prisoner *both* for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. 9 *W. R.* 33.

LIMIT (*of sentence for offence which is made up of several offences*) *P. C. S.* 71.

386. S. 71 P. C. applies to the case of a person charged with " house-break-

ing" under S. 457, and "theft," committed on the same occasion, under S. 380 of the Penal Code. 1 *B. R.* 87.

SEPARATE (*sentences*)

387. A double sentence for theft and mischief is illegal and improper. 6 *W. R.* 5.

388. Separate convictions and sentences under S.S. 429 and 379, and under S. 457 and 380 of the Penal Code, were set aside; and the convictions under S. 429 in the former case, and under S. 457 in the latter, allowed to stand. 8 *W. R.* 31.

389. Separate sentences cannot be awarded in one case for abducting a child in order to take property from its person (S. 369), and theft after preparation to cause death to (S. 382), where the evidence shows that the act was one and the same. The sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death &c. within the meaning of that section. 8 *W. R.* 84.

390. Sentences of imprisonment may be accumulated beyond the period of 14 years, notwithstanding S. 46* O. Cr. P. C., which limit has reference only to sentences passed simultaneously, or passed upon charges tried simultaneously. 7 *W. R.* 1.

391. Where the accused stole property at night belonging to two different persons from the same room of a house. It was held that he could not be sentenced separately as for *two* offences of theft. 11 *W. R.* 38.

392. In addition to punishing a Police Officer with fine under S. 161 P. C. for taking a bribe, the Joint Magistrate, in his administrative capacity, ordered his dismissal. Held that the order of fine and the order of dismissal should not be treated as one sentence beyond the competency of the Joint Magistrate to pass. 5 *W. R.* 4.

393. Where several persons were tried together and convicted, under S. 147 P. C., of rioting, and two of them were sentenced to pay each a fine of Rs. 50, or in default of payment to undergo rigorous imprisonment for a month, and the others were sentenced to a severe punishment, the Sessions Judge entertained an appeal by all the prisoners, being of opinion that the test, under S. 411† O. Cr. P. C. as to whether a case is appealable, is the maximum sentence passed in it:

The High Court annulled the order of the Sessions Judge passed with reference to those of the accused who had been only fined Rs. 50, and restored the original sentences passed upon them. 7 *B. R. A. J.* 35.

394. Conviction and sentence both for rioting and for grievous hurt upheld, the punishment being on the whole not more severe than might properly have been awarded if the conviction had been for grievous hurt only. 5 *W. R.* 18.

395. There is nothing illegal in passing separate sentences for kidnapping and for selling for purposes of prostitution. 7 *W. R.* 104.

396. Where prisoners are convicted of separate offences, a separate sentence should be passed on each case with a direction that the imprisonment in the second case should commence on the expiration of that in the first and so on. 4 *M. R. App.* 27.

397. Where a prisoner convicted of "house-breaking in order to commit theft", and of "theft", both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one years' rigorous imprisonment, under S. 457 P. C., and on the second head of charge to receive twenty stripes, under S. 2 of the Whipping Act; the separate sentences (though not illegal) were disapproved of, as contrary to the spirit and intention of the Whipping Act. 5 *B. R.* 83.

SEVERE (*sentence*)

398. The offence of uttering forged documents requires in this country to be punished with the severest punishment allowed by law. 3 *W. R.* 13.

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* See S. 314 N. Cr. P. C. † See S. 273 N. Cr. P. C.

399. The offence of altering one part of a document executed in two part for the mutual security of both the parties concerned, deserves to be severely punished. 17 *W. R.* 58.

400. Where a quiet peaceable man, suddenly and without the least motive or provocation, runs-a-muck against all around him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty. 8 *W. R.* 53.

401. A sentence of three year's imprisonment is not too severe a punishmen for a deliberate attempt to pervert justice by fabricating in one office false statements to be designedly and corruptly used in another. 8 *W. R.* 18.

402. Severe sentence of transportation for life in a case of aggravated dacoity confirmed as required by the state of the district. 6 *W. R.* 9.

SENTENCE (*in cases of conviction of certain offences*)

AFFRAY (*sentence in case of*)

403. In on affray respecting land, one party were the aggressors, and th other side (had the affair not ended fatally) would have been in the legal exercis of the right of defence of property and would have been entitled to the benefit o S. 104. P. C. Held that one year's rigorous imprisonment was sufficient punishmen for the latter. 1 *W. R.* 34.

DACOITY (*sentence in case of*)

404. In a case of dacoity, a sentence of 14 years' transportation was held illegal and reduced to 10 years' transportation under S. 395 P. C. 6 *W. R.* 88; 13 *W. R.* 27.

FALSE EVIDENCE (*sentence in case of*)

405. A false statement by a witness, as to his position or character ought not to be punished so severely as a false charge on a false claim. 5 *W. R.* 95.

406. A deliberate mis-statement made in a court of justice, whether it tends to endanger the life and property of others, or to defeat and impede the progress of justice is not an offence which should be lightly passed over. But for a simple mis-statement from which no such inferences can be drawn, a comparatively light sentence will suffice, particularly, where the prisoner pleads guilty and throws himself on the mercy of the court. 7 *W. R.* 37.

FALSE EVIDENCE, ATTEMPT TO FABRICATE (*sentence in case of*)

407. The term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of judicial proceeding, cannot extend beyond one-half of 7 years. 3 *W. R.* 59.

HURT, GRIEVOUS (*sentence in case of*)

408. The amount of punishment for cutting off a wife's nose for intriguing with another man, depends on the time of the commission of the grievous hurt, whether at the instant or long after the husband found himself dishonored. 4 *W. R.* 17.

KIDNAPPING (*sentence in case of*)

409. The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature. 8 *W. R.* 3.

MURDER (*sentence in case of*)

410. On a conviction for murder, the only punishments that can legally be awarded are death or transportation for life. 14 *W. R.* 2.

411. A sentence of transportation other than *for life*, is illegal in the case of a prisoner convicted of murder. 6 *W. R.* 85.

412. The punishment of death should not be inflicted in a case where there was no intention to cause death, but merely a reckless assault with a deadly weapon

which inflicted a bodily injury likely in the ordinary course of nature to cause death. 5 *W. R.* 20.

413. Where a prisoner convicted of murder, against the opinion of the Assessors, was sentenced to transportation for life, the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code and on the necessity of administering it so as to make it apply to the various gradations and degrees of crime in this country. 7 *W. R.* 47.

PREVIOUS CONVICTION (*sentence in case of*)

414. An offender is only liable to enhanced punishment under S. 75 P. C. for an offence punishable under c. 17, after having been punished with imprisonment for the same offence or for an offence punishable under the same Chapter. 5 *W.R.* 66.

415. To justify enhanced punishment under S. 75 P. C. on account of previous conviction, both convictions must be of offences punishable under cs. 12 and 17 of the code, and comitted after the code came into operation. 3 *W. R.* 17; 4 *W. R.* 9.

416. To warrant a sentence awarding additional punishment under S. 75 P. C. as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code must be clear and precise. 14 *W. R.* 7.

417. A prisoner convicted, under S. 380 P. C., of theft in a building used for the custody of property, was sentenced, under S. 75, to fourten years' transportation, as he had been previously convicted thirteen times of offenses now punishable, under Chapter 17 of the Code, with imprisonment for three years or upwards:—Held that, as all the previous convictions were prior to the passing of the Penal Code, the present offence was not punishable under S. 75 P. C. 4 *B. R.* 11.

418. Sentence of transportation for 14 years under S. 392 P.C. annulled, as the offence for which such sentence was passed was not committed subsequently to any conviction; and S. 75 had, therefore, been improperly applied.

Semble, that a Sessions Judge cannot (under S. 75 P. C. or otherwise), by amalgamating a sentence which he is competent to pass upon a prisoner with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted. 5 *B.R.* 36.

419. Where a first class Subordinate Magistrate sentenced a prisoner to six months' rigorous imprisonment, under S.457 P.C., and, finding that the prisoner was liable to enhanced punishment under S. 75 P. C., sentenced the prisoner to six months' further imprisonment, under S. 46 O. Cr. P. C., the latter sentence was set aside by the High Court. 5 *M. R. App.* 3.

RAPE (*sentence in case of*)

420. Under Ss. S. 57, 376 and 511 of the Penal Code, a sentence of 10 years' transportation or of 5 years' rigorous imprisonment may be passed for the offence of attempt to commit rape; but a sentence of 7 years' rigorous imprisonment commutable under S. 59 P.C. to 7 years' transportation is illegal. 10 *W.R.* 10; 1 *B.L. R. App.* 5.

SENTENCE (*passed in absence of accused*) *N. Cr. P. C. S.* 46.

421. When the proceedings in a case tried by a Subordinate Magistrate are submitted, under S. 277 O. Cr. P. C. to a District Magistrate to pass sentence upon the accused, the accused is entitled to be present at the passing of such sentence before the District Magistrate. 7 *B. R. A. J.* 31.

SOLITARY CONFINEMENT. *P. C. S.* 73.

422. Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under S. 74 P. C. it is to be imposed at intervals. 3 *B. L. R. A. J.* 49.

TRANSPORTATION.

IMPRISONMENT (*transportation when may be awarded instead of*) *P. C. S.* 59.

423. To bring S. 59 P.C. into operation, the punishment awarded on one offence alone must be 7 years' imprisonment, and cannot be made up by adding two sentences together and then commuting to amalgamated period to transportation. 2 *W.R.* 1.

424. Under S. 59 P. C. no sentence of transportation for a shorter period than 7 years can be passed on any charge. Therefore, where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding under S.193P.C. and of forgery under S. 467 P.C. and sentenced to seven years' transportation for the first offence, and a further period of transportation for 3 years for the second offence, the second sentence was quashed as illegal. 8 *W. R.* 2.

425. A sentence of transportation for two periods each of 7 years, one sentence to commence after the expiration of the other, is not warranted by S. 46 O. Cr. P. C., that section allowing such sentences only when the penalties consist of *imprisonment*. 11 *W. R.* 10.

426. A sentence of transportation under S. S. 412 and 59 P. C. cannot exceed 10 years. 5 *W R.* 16.

427. Neither under S. 307, nor under S 394 P. C., can a prisoner be sentenced to 14 years' transportation, the punishment awardable under those sections being transportation for life, or rigorous imprisonment for 10 years with fine. 7 *W. R.* 41.

428. Transportation can only be substituted for imprisonment when the offender is sentenced to at least 7 years' imprisonment in one case. 3 *W.R.* 44.

429. A sentence of transportation cannot be less than 7 years. To bring S. 59 P C. into operation, the punishment awarded in each offence alone must be not less than 7 years' imprisonment. A general sentence of transportation for two or more offences, when only one of the punishments awarded is 7 years' imprisonment, is illegal. 5 *W. R.* 44.

MITIGATION (*of sentence of transportation*)

430. The High Court has no power, even where there is ground for doing so, to mitigate a sentence of transportation for life passed on persons found guilty of murder. 16 *W. R.* 65.

WHIPPING.

431. In order to legalize whipping in addition to imprisonment in the case of a second conviction, the offence must be the same in both cases. 4 *W. R.* 20; 5 *M. R. App* 1. 39.

432. Whipping cannot be added to a sentence of imprisonment in the case of a first conviction for the offence under punishment. 1 *W. R.* 24.

433. Whipping may be substituted for any other punishment for the offence of theft in dwelling-house. 3 *W. R.* 36.

434. On a reference by a Sessions Judge, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in S. 2 Act VI. of 1864, was annulled : as the offence was not committed after previous conviction. 3 *B. R.* 38 ; 4 *B. R.* 5.

435. S. 3 Act VI of 1864 does not allow of whipping in addition to imprisonment in the case of a fresh conviction. 2 *W. R.* 63.

436. S. 3 Act VI of 1864, applies to juvenile as well as to adult offenders. That section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction. 7 *B R. A. J.* 70.

437. A prisoner convicted of "theft in a dwelling-house" who has previously been convicted of "simple theft" is not thereby rendered liable to whipping, under Act VI of 1864 S. 3. 7 *B. R. A. J.* 68.

438. Follows the Full Bench Decision ruling that when a person who has been previously convicted (S. 4 Act VI 1864) is a second time convicted at one time of 'two or more offences' he may be punished with only one whipping in *addition* to any other punishment to which, under S. 46 O. Cr. P. C, he may be liable. 14 *W. R* 7.

439 A sentence of whipping under S. 4 Act VI of 1864 can only be inflicted in addition to other punishment on a second conviction of the offences, specified therein, when the first offence was committed some time previous to the second conviction, though after the passing of the Indian Penal Code, 12 *W. R.* 68; 3 *B. L. R. App.* 149.

440. Held by the majority, that when a person who has not been "previously convicted," (*vide* S. 4 Act VI of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of these offences, *in addition* to imprisonment or fine for the other or others; but it is not illegal to sentence him to *one whipping in lieu of all other punishments.* Held, further, that when a person who has been "previously convicted," is convicted at one time of two or more offences, he may be punished with one, but only *one* whipping, *in addition to* any other punishment to which, under S. 46 O. Cr. P. C., he may be liable. 9 *W.R.F.B.R.*41.

441. Held (*Kemp and Phear, J. J. dissenting*) that notwithstanding S. 46 O. Cr P. C. a person convicted at the same time of two or more offences punishable under the Penal Code may, in addition to the punishments prescribed by the Penal Code, be sentenced to whipping under Act VI of 1864. The Penal Code and the Code of Criminal Procedure must be read as if the whipping Act formed a part of the Penal Code from the date of its enactment, and S. 46 of the Code of Criminal Procedure is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form. 15 *W. R. F. P. R* 89 ; 7 *B. L. R.* 165.

442. A Deputy Magistrate passed a sentence of six months rigorous imprisonment and whipping of 20 stripes on a person whom he convicted of house-breaking. The Sessions Judge on appeal set aside the sentence of whipping and commuted that portion of the sentence into one of rigorous imprisonment—for 3 months. Held that the Sessions Judge acted rightly in setting aside the sentence of whipping, as the conviction was a first conviction of the offence; but that the commutation of the sentence of whipping into one of 3 months' rigorous imprisonment amounted to an enhancement of the sentence which had been passed by the Deputy Magistrate, and was therefore illegal, having regard to S. 419 O. Cr. P. C. The High Court accordingly set aside the sentence of 3 months' additional rigorous imprisonment. 15 *W.R.* 7.

443. In passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out : On the recommendation of the Sessions Judge (who referred to S.S. 305 and 310 Act X of 1872), the High Court cancelled the sentence of whipping as having become inoperative and incapable of being carried out. 20 *W. R.* 72.

444. A sentence of flogging cannot be carried out after the expiry of the limit of 15 days from date of sentence provided in S.9 of Act VI. of 1864. 6 *M.R.App.* 38.

445. Section 12 of the whipping Act refers to the court by which a case is tried in the first instance, and not to a Court of Appeal. 15 *W. R* 7 ; 6 *B. L. R. App.* 95.

446. In the case of a conviction of attempting to commit house-breaking by night, with intent to commit theft, a sentence of whipping was annulled, as being illegal. 3 *B. R.* 37.

447. As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way. A mere *kyfeut* is no evidence whatever. 15 *W. R.* 52, 53.